

## Notary's Accountability for Reporting Copies of the List of Deeds to the Regional Supervisory Board (MPD)

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**Abstract.** Article 61 of UUJN paragraph (1) states that a Notary, either personally or through his/her proxy, shall submit in writing a certified copy of the list of deeds and other lists made in the previous month no later than 15 (fifteen) days in the following month to the Regional Supervisory Board. Supervision of Notary actions is important to maintain integrity and order in the making of deeds. However, negligence of Notaries in submitting reports is still found which has an impact on the validity of deeds and potential losses for the community. The purpose of this study is to provide an overview of the Notary's accountability for reporting copies of the list of deeds to the MPD and the sanctions applicable to such negligence. The method used in this study is the normative legal research method. The approach method used is a qualitative approach. The types and sources of data used are primary and secondary data. The data analysis method used in this study is prescriptive. The results of the study found that: 1) The legal consequences arising from negligence in the event that a Notary is negligent in the process of recording the list of deeds when reporting to the Regional Supervisory Board are in violation of Article 61 of UUJN. The notary's negligence in submitting a copy of the deed list to the Regional Supervisory Board is an administrative negligence concerning the notary's behavior. 2) Sanctions for violations of obligations in Article 61 of the UUJN are regulated in Law Number 2 of 2014 (Amended UUJN), the Regional Supervisory Board of the Indonesian Notary Association itself provides sanctions in the form of the first is a verbal warning and coaching to avoid 2 types of errors, namely administrative errors and substantive errors.

**Keywords:** Deed Reporting; Notary Accountability; Regional Supervisory Board.

## 1. Introduction

Indonesia as a country of law based on Pancasila and the 1945 Constitution, prioritizes the principles of certainty, order, and legal protection. In social life, society is often involved in relationships that give rise to legal acts, which can have certain legal consequences. In this case, legal certainty is very necessary to maintain the state's legal system so that it functions properly.<sup>1</sup> One form of legal evidence that has the strongest evidentiary power is a notarial deed. This deed is produced through a formal process carried out by an authorized public official, namely a Notary. A notarial deed made in accordance with legal provisions is valid as valid evidence and can be accepted in court. An authentic deed has a higher value compared to other written evidence, and in some cases, legal acts such as the establishment of a company or the granting of fiduciary guarantees require an authentic deed as a mandatory requirement.<sup>2</sup> As a public official who has the authority to make authentic deeds, Notaries are regulated in the Notary Law (UUJN). Notaries not only function to provide legal services, but also play a role in preventing fraud and providing legal protection to the community. Therefore, it is important to have supervision of Notaries to ensure that they carry out their duties in accordance with applicable provisions.<sup>3</sup>

The word "notary" comes from the Latin term "nota literaria" which refers to signs or characters for writing sentences. The concept of a notary was first used in ancient Rome, where notaries acted as royal scribes. Historically, notaries functioned as public officials who made authentic deeds to provide legal certainty.<sup>4</sup> In Indonesia, notaries have the authority to make authentic deeds that are legally binding, unlike Anglo Saxon notaries who only validate signatures and documents. The main task of a notary is to make deeds that fulfill the elements of truth, validity, completeness, and clarity. Notaries also provide legal advice and are responsible for the accuracy of the deeds made. The appointment of a notary requires Indonesian citizenship, a minimum age of 27 years, and a

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<sup>1</sup>Ardiyah, I Ketut Rai Setiabudhi, and Gde Made Swardhana.(2017). Legal Sanctions Against Notaries Who Violate the Obligations and Prohibitions of the Notary Law, *Acta Comitas: Scientific Journal of the Notary Study Program*, Volume 1 Number 2, Faculty of Law, Udayana University

<sup>2</sup>Ezra Johannes Tuwaidan, Rossel. (2018). "Authority of Notary According to Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Position", *Lex Privatum Vol. VI/No. 6/Ags/2018*.

<sup>3</sup>Haryati, Felisa, 2018, Violation of the Notary Code of Ethics Regarding Unhealthy Competition Among Fellow Notaries Reviewed from the Regulations of the Code of Ethics of the Indonesian Notary Association (INI), *Volkgeist Law Journal*, Volume 3 Number 1, Faculty of Law, Airlangga University

<sup>4</sup>Hasfarevy, Tiara, 2021 "The Role of the Regional Honorary Council in Resolving Violations of the Notary Code of Ethics in Pekanbaru City." *Recital Review* Volume 3 Number 1

bachelor's degree in law. Dismissal of a notary can occur for reasons such as age, self-request, or violation of professional ethics<sup>5</sup>.

The Regional Supervisory Council (MPD), Regional Supervisory Council (MPW), and Central Supervisory Council (MPP) have important roles in supervising the Notary position. The MPD is formed at the Regency/City level, with members consisting of the government, notary organizations, and experts. The MPD has the authority to hold hearings, examine violations of the code of ethics, and grant leave permits or appoint replacement notaries. The MPW, which is at the provincial level, handles public reports and grants leave permits of more than six months, as well as imposing sanctions on notaries. The decision of the MPW is final, but notaries can appeal to the MPP. The MPP, which is domiciled in the National Capital, has the authority to examine appeals of sanctions and refusals of leave, as well as to issue temporary dismissals or proposals for dishonorable dismissals. The decision of the MPP is submitted to the Minister and related parties. All of these institutions play a role in maintaining the integrity of the notary profession and ensuring the implementation of appropriate regulations.

To ensure that the Notary's duties are carried out properly, UUJN requires Notaries to record all deeds that have been made in a repertory book, which contains a list of deeds that have been made. This repertory is a very important control, because tracking deeds made by Notaries can prevent abuse of authority.<sup>6</sup> In addition, Notaries are required to report a copy of the list of deeds that have been approved to the Regional Supervisory Council (MPD) every month. The MPD functions to supervise the performance of Notaries so that they comply with existing regulations and avoid negligence that can harm the community. However, in the field there are problems related to the negligence of Notaries in submitting copies of the list of deeds to the MPD. This has the potential to cause serious legal problems, because if there is an error or negligence in recording or reporting, it can harm other parties and damage the credibility of the Notary. Therefore, strict supervision from the MPD is very necessary to maintain the quality of the Notary's work and prevent errors that can have fatal consequences. The purpose of this study is to analyze and provide an overview of the Notary's accountability for reporting copies of the list of deeds to the MPD. In addition, this study also aims to discuss the sanctions that apply to Notaries who are negligent in carrying out their obligations in accordance with applicable legal provisions. Effective supervision and appropriate sanctions will ensure that Notaries can carry out their duties with professionalism and fulfill their legal responsibilities.

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<sup>5</sup>Ma'ruf, Umar, 2015, "Legal Review of the Position and Function of Notaries as Public Officials in Making Authentic Deeds", *Journal of Legal Reform* Vol 2 No 3, Unissula; Semarang

<sup>6</sup>Prasetyo Putri, Karina, 2016 "Responsibility and Legal Protection for Retired Notaries for Deeds They Have Made", *Collection of Student Journals of the Faculty of Law*

## 2. Research Methods

This research uses a normative legal approach, where this research focuses on the legal norm system, such as principles, norms, laws and regulations, court decisions, agreements and legal doctrine.<sup>7</sup> According to Peter Mahmud Marzuki, this study aims to find legal rules, principles, and doctrines to answer legal problems. The approach methods used include the normative legal approach, which focuses on secondary data from various legal sources, such as legislation, books, and official documents. The three main approaches used are the statutory approach (Statute Approach), which prioritizes regulatory analysis as the basis for research; the analytical approach (Analytical Approach), which seeks the meaning of legal terms and tests their application through legal decisions; and the case approach (Case Approach), which studies legal norms based on cases that have been decided by the courts<sup>8</sup>. The main data sources in this study are primary legal materials, such as laws, court decisions, and official documents, as well as secondary legal materials which include books, journals, and legal doctrines.<sup>9</sup> Data is collected through literature studies, which can now be done through internet media. Data analysis is carried out prescriptively to provide legal arguments that can be used as a basis for solutions to legal problems faced.

## 3. Results and Discussion

### 3.1. Legal Consequences If a Notary Commits Negligence in the Process of Recording the List of Deeds When Reporting to the Regional Supervisory Board

Certainty, order, and legal protection in legal traffic require clear evidence regarding the rights and obligations of a person as a legal subject. One of the important roles that supports this legal certainty is the Notary. The Notary plays a preventive role, namely preventing legal problems from occurring by making authentic deeds that can be used as valid evidence in court. This authentic deed has perfect evidentiary power and is considered the strongest evidence in the event of a dispute.<sup>10</sup> Notaries, as public officials, are authorized by the Notary Law (UUJN) to make authentic deeds in various legal acts, except in certain cases where the authority is transferred to other officials. The existence of Notaries is greatly needed by the community,

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<sup>7</sup>Ali, Zamaludin 2016, *Legal Research Methods*, 7th Edition, Jakarta: Sinar Grafika

<sup>8</sup>Ali, Achmad, 2010, *Uncovering Legal Theory and Judicial Theory Including Interpretation of Laws (Legisprudence)*, Makasar: Director of Postgraduate Program, Muslim University of Indonesia

<sup>9</sup>Fajar, Mukti and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, First Edition, Yogyakarta: Pustaka Pelajar

<sup>10</sup> Farkhani, 2018, *Philosophy of Law, Arranging the Paradigm of Post Modernist Legal Thinking*, Solo: Kafilah Publishing

especially by economic actors who require a guarantee of authenticity in the implementation of business agreements. In addition to authority, Notaries also bear the responsibility to ensure that the deeds made comply with applicable legal provisions, as regulated in the UUJN and the latest notary code of ethics.

In carrying out their duties, Notaries are required to comply with the limits of the authority granted. If they exceed their authority or act outside the applicable provisions, the Notary's actions can be considered unlawful. Violations committed by Notaries, whether in the form of negligence or abuse of authority, can disrupt legal certainty and reduce the sense of justice in society.<sup>11</sup> Notaries have administrative obligations regulated in the UUJN, one of which is the obligation to submit a copy of the list of deeds every month to the Regional Supervisory Board. This obligation aims to ensure the certainty of the date of the deed and maintain administrative order. If the Notary does not carry out this obligation, for example by not recording the deed according to the number sequence, this can be considered administrative negligence that risks violating the law. The implementation of the Notary's duties must be carried out carefully and thoroughly, especially in giving dates to the deed. If the Notary gives a deed date that does not match the time the deed was made (antidating), the deed is legally invalid. One example of a violation is when the parties come on a certain date to make an agreement, but the Notary gives an earlier date to avoid taxes or other obligations. This action clearly violates the UUJN and can cancel the validity of the deed<sup>12</sup>.

In addition, Notaries also have an obligation to be impartial to one of the parties in the agreement made. Notaries must be independent, regulate legal relations in writing and authentically, and ensure that the agreements drawn up are in accordance with applicable legal principles and do not harm either party. Violations committed by Notaries can result in administrative sanctions, including revocation of licenses or other disciplinary actions. Therefore, it is important for Notaries to carry out their duties with full responsibility, discipline, and avoid any form of violation that can harm other parties or damage the existing legal system. Deeds made by Notaries are authentic evidence that has very strong legal force in court. In this case, Notaries can be used to refute or clarify a deed if there is a party who doubts its authenticity. However, negligence in recording or reporting deeds can cause serious legal problems, such as the failure to record a deed in the repertory or other administrative violations. Overall, the role of Notaries in

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<sup>11</sup>Mangesti, Yovita A. and Bernard L. Tanya. 2014, *Legal Morality*, Yogyakarta: Genta Publishing

<sup>12</sup>Notohamidjojo, 2011, *Basic Questions on Legal Philosophy*, Griya Media, Salatiga

ensuring legal certainty and protection of rights and obligations is very important, both in the context of making authentic deeds and in fulfilling administrative obligations. Compliance with UUJN and the code of ethics is the main requirement for Notaries to carry out their duties properly and maintain public trust in their profession.

Gustav Radbruch's theory of justice, known as the "Radbruch Trias," offers an approach that combines three essential elements of law: justice, legal certainty, and social utility. In Radbruch's view, good law must not only provide certainty, but must also reflect the moral values that exist in society. Radbruch developed this theory based on the idea that law must be able to balance the fulfillment of social needs with the application of justice that prioritizes the benefits of society.<sup>13</sup> One of the main features of Radbruch's theory is the assertion that an unjust law, even if it provides legal certainty, cannot be maintained. In the context of the Notary's accountability regarding the reporting of copies of the deed register to the Regional Supervisory Council (MPD), Radbruch's theory of justice can be adapted to assess how the law should be treated, especially in terms of enforcing the administrative obligations of a Notary. A Notary has an obligation regulated by Article 61 of the UUJN to submit a copy of the deed register that he has authorized to the MPD within a specified time. Failure to comply with this obligation can lead to administrative sanctions, including oral warnings, written warnings, temporary dismissal, and dishonorable dismissal.

In this case, according to Radbruch's theory, it is important to find a balance between legal certainty and justice. Legal certainty requires that a Notary who does not fulfill his obligations can be subject to appropriate sanctions, but there must be attention to the principle of justice.<sup>14</sup> If the Notary is negligent in reporting due to administrative negligence or lack of understanding, the sanctions given should be in the form of guidance and not severe punishment. This aims to educate and remind the Notary of his obligations, without immediately imposing penalties that could unfairly harm the party. On the other hand, if the negligence or violation committed by the Notary is substantive and repeated, resulting in real losses for the parties involved or damaging the integrity of the legal system, then the law can impose more severe sanctions. In this case, the application of sanctions must pay attention to the aspect of justice, which means that the law must protect the interests of the community and the individuals involved, and ensure that no party is harmed due to the negligence or abuse of authority of the Notary.

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<sup>13</sup>Sjaifurrachman, Habib Adjie, 2011, *Aspects of Notary's Accountability in Making Deeds*, Jakarta: Mandar Maju

<sup>14</sup>Soesanto, R. 1982, *Duties, Obligations, and Rights of Notaries; Deputy Notary (temporary)*, Jakarta: Pradnya Paramita



Radbruch's theory of justice also teaches that in the application of law, there needs to be room for adjustment to the specific circumstances that exist. In this case, the imposition of administrative sanctions by the MPD against Notaries who are negligent in reporting the list of deeds must not only be based on applicable provisions, but must also consider other factors such as intent, level of negligence, and the impact caused by the action. For example, if a Notary commits administrative negligence without malicious intent and no real loss is caused, then the sanctions given should be lighter and more of a form of guidance, not too severe punishment. Thus, in the context of the Notary's accountability for his obligation to report a copy of the list of deeds to the MPD, Radbruch's theory of justice provides guidance for balancing legal certainty with moral values and justice. The law must not only provide certainty but must also provide a fair solution, taking into account the specific circumstances and impact of the actions taken. This principle leads to a legal system that is more humane and responsive to the needs of the community, and is able to maintain the integrity and trust in the Notary profession..

### **3.2. Sanctions Imposed by the Regional Notary Supervisory Board Against Notaries Who Do Not Carry Out Monthly Reports of the Deed Register**

Negligence in carrying out the duties of a Notary can harm many parties, including the community, the state, and the parties involved in making the deed. Such negligence, for example, can occur if the Notary does not submit a monthly report of the list of deeds in accordance with the provisions stipulated in Article 61 of the UUJN. As a public official who is trusted to make authentic deeds, a Notary is obliged to carry out his duties with full responsibility and care so as not to cause legal problems, such as anti-dated deeds that can harm related parties. The Notary Code of Ethics provides guidelines that must be followed by Notaries in carrying out their profession. However, as ordinary human beings, Notaries can also make mistakes or violations. If a Notary does not carry out his obligations, such as not submitting a monthly report of the list of deeds to the Regional Supervisory Board, this can result in administrative sanctions. Administrative sanctions are given as a form of legal protection to ensure that Notaries comply with existing obligations. Without these sanctions, Notaries can deviate from established procedures and damage the legal system.

Administrative sanctions are intended to encourage Notaries to comply with the law without having to involve a judge. Administrative violations, which are not included in the criminal or civil categories, can be subject to sanctions by the authorized institution, namely the Regional Supervisory Council. These administrative sanctions are tiered, starting from verbal warnings, written

warnings, temporary dismissal, to honorable or dishonorable dismissal.<sup>15</sup>. The sanctions imposed depend on the severity of the violation committed by the Notary. According to Article 61 of the UUJN, Notaries are required to submit a copy of the list of deeds that have been legalized within a maximum of 15 days in the following month to the Regional Supervisory Board. If this violation occurs, such as negligence in sending reports or making deeds that do not comply with procedures, the Notary can be subject to sanctions in accordance with the provisions in Article 85 of the UUJN. This administrative sanction is also regulated in the Amendment to the UUJN (UUJN No. 2 of 2014), which provides stricter and more specific sanctions for Notaries who violate administrative obligations related to the report of the list of deeds. The Regional Supervisory Board of the Indonesian Notary Association (MPD INI) is tasked with providing guidance and supervision to Notaries<sup>16</sup>. Guidance is carried out to avoid minor administrative errors or serious substantive errors, which can reduce the authenticity of the deed. This guidance begins with an examination and report to the Regional Supervisory Council (MPW), and if the violation is repeated, the Notary will be subject to further administrative sanctions.<sup>17</sup>.

In the case of a report on the negligence of a Notary, the public can submit a written complaint to the Regional Supervisory Council. If the report is proven, a hearing will be held to prove whether the Notary is guilty. This hearing is held to assess whether the negligence is serious enough to be subject to appropriate sanctions.<sup>18</sup>. In terms of dismissal sanctions, in accordance with Article 66 of Permenkumham No. 25 of 2014, a Notary can be temporarily or permanently dismissed from his/her position if he/she is involved in a serious violation, such as disgraceful acts, violation of job obligations, or the Notary code of ethics. This dismissal procedure is objective and hierarchical, depending on the level of error committed by the Notary. Success in maintaining the dignity and integrity of the Notary profession requires strict supervision and compliance with the applicable code of ethics and regulations. As a public official who serves the interests of the community, a Notary must have strong accuracy and morals in order to provide reliable services. Good supervision from related institutions and high discipline from the Notary himself/herself are very important to prevent negligence and violations that can harm many parties..

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<sup>15</sup>Tobing, Lumban, 1996, Notary Regulations, 4th ed., Jakarta: Erlangga.

<sup>16</sup>Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary

<sup>17</sup>Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation

<sup>18</sup>Civil Code



#### **4. Conclusion**

Notary negligence in the process of recording the list of deeds when reporting to the Regional Supervisory Council (MPD) can have detrimental legal consequences. Based on Article 61 of the UUJN, the obligation of Notaries to submit a copy of the list of deeds every month is an important administrative step, because errors in reporting or irregularity in the numbering of deeds can be very risky, including leading to allegations of negligence or administrative violations. This negligence is not only related to administrative procedures, but can also reflect a lack of order in the implementation of Notary duties. In response to this violation, the Regional Supervisory Council imposes sanctions starting from verbal warnings, followed by written warnings if the violation is repeated, to temporary dismissal or other sanctions in accordance with applicable regulations. In implementing sanctions, the MPD prioritizes the coaching function, with the aim of avoiding administrative or substantive errors that can harm related parties. Based on the conclusion above, the suggestion that can be given is for Notaries to be more careful and cautious in carrying out their profession, to avoid negligence that can cause losses for both the parties and the Notary himself. In addition, it is hoped that the supervisory function of the Regional Supervisory Council (MPD) towards Notaries can be optimized. Enforcement of sanctions related to negligence in reporting copies of the deed list needs to be further socialized, both to related Notary organizations and to individual Notaries, especially in Kendal Regency, to increase awareness and compliance with applicable legal obligations, as well as maintain integrity and professionalism in carrying out Notary duties.

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