

Responsibilities And Werda Notary's Legal Protection for Deeds He Made While Still Serving as a Notary

Muchammad Bachtiar Al Majid¹⁾ & Jawade Hafidz²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, E-mail: bachtiar.mbam@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, E-mail: jawade@unissula.ac.id

Abstract. *Responsibility and legal protection in the UUJN only regulates "notaries who are still in office", not "notaries whose term of office has ended". This research aims to determine the responsibilities of retired notaries regarding deeds made while still in office and their form. legal protection for retired notaries for deeds made while still in office. The research method in this study uses a normative juridical approach, research specifications use descriptive analysis, data sources and data collection techniques use secondary data taken through literature study and data analysis uses qualitative analysis. The results of the research show that a retired notary remains responsible for deeds made while still in office until he dies. Meanwhile, the form of legal protection for retired Notaries is contained in the Memorandum of Understanding between the Indonesian National Police and INI number: 01/MOU/PPINI/V/2006 and in Article 66 UUJN. This article means that legal protection applies to notaries who are still serving and those who have retired. Because the responsibility of a notary is lifelong, the legal protection for notaries in Article 66 UUJN also applies until the notary dies.*

Keywords: Notary; Protection; Responsibility; Werda.

1. Introduction

In history, the word "Nota Literaria" is a written sign or character used to write or illustrate the sentences conveyed by the source. The signs or characters in question are the signs used in fast writing (stenography). Notaries as they were known in the days of the "Republik der verenigde nederlanden"¹ began to enter Indonesia at the beginning of the 17th century with the existence of "Oost Ind. Company" in Indonesia.² According to the Big Indonesian Dictionary, Notary has

¹GHS Lumbon Tobing, 1980, Notary Public Regulations, Erlangga, Jakarta, p. 41

²Ibid, p. 15

the meaning of a person who has authority from the government based on appointment to ratify and witness various agreements, wills, deeds and so on.

In 1860, the Dutch East Indies government adjusted the regulations regarding the position of notary in Indonesia with the regulations in force in the Netherlands, then promulgated the notary position regulations (Notaris Reglement) Staatblad 1860 Number 3 which were promulgated on July 1 1980. The regulations on the position of notary consist of 63 articles which is a codification of the wet notary which applies in the Netherlands, while the wet notary which applies in the Netherlands is a codification of the French.³

A notary is a public official who has the authority to make authentic deeds, as long as the making of authentic deeds is not reserved exclusively 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.

A notarial deed as an authentic deed is made according to the form and procedures stipulated in Articles 38 to 65 UUJN. A deed becomes authentic if it meets the requirements 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 cannot be doubted. What is stated at 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 the deed was made. This is stated firmly in Article 65 UUJN: "Notaries, Substitute Notaries, Special Substitute Notaries and Temporary Notary Officials are responsible for every deed they make even though the Notary Protocol has been submitted or transferred to the party holding the Notary Protocol."

In connection with this, Article 65 UUJN considers that, Those who are appointed as notaries, substitute notaries, special substitute notaries, and temporary notary officials are considered to carry out personal and lifelong duties so that there is no time limit for responsibility, notary accountability, substitute notary, notary special substitutes, and temporary notary officials are considered attached, wherever and wherever the former notary, former substitute notary, former special substitute notary, and former temporary notary official are located.

According to Abdul Ghofur, the responsibilities of a notary as a public official relating to the material truth of the deed he or she makes, are divided into four

³Nico Winanto, 2003, Responsibilities of Notaries as Public Officials, Contractor Documentation, and Studies of Business Law (CDSBL), Yogyakarta, p. 18

points, namely:

1. The notary's civil responsibility for the material truth of the deed he or she makes;
2. Notary's criminal responsibility for material truth in the deed he or she makes;
3. The notary's responsibility is based on the notary office regulations (UUJN) regarding the material truth in the deed he or she makes;
4. The notary's responsibilities in carrying out his office duties are based on the notary's code of ethics.

Pay attention to the provisions of Article 65 UUJN that the notary is responsible for every deed he makes even though the Notarial protocol has been submitted or transferred to the party holding the notarial protocol. This then raises the question of how long the notary is responsible for the deed he or she makes. 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 as to whether a notary whose term of office has ended (werda notary) is still responsible for the deeds he made while he was a notary. If the werda notary is asked to be responsible for the deed he has made, what form of legal protection can the werda notary obtain?

Based on the description above, what is the responsibility of the werda notary for deeds made while still in office and what is the legal protection for the werda notary in relation to deeds made while still in office, it is necessary to study the responsibility and legal protection of the werda notary against deeds made while still in office

2. Research Methods

The research method used in this thesis uses a Normative Juridical approach. Normative juridical research is conducting research by examining statutory regulations, legal theory and jurisprudence related to the research discussed. The specifications of this research, which are descriptive analysis or describing, writing and reporting an object or event, will also draw general conclusions from the problem being discussed. The data source used is secondary data. The data collection method uses library research. The data analysis method used is a qualitative method.

3. Results and Discussion

3.1. The notary's responsibility for deeds made while still in office

In order to enforce the law, a Notary carries out a mandate that concerns the interests of society in general, therefore it is mandatory for a Notary to have professional responsibility for the mandate he carries out.

Responsibility and professional ethics are closely related to integrity and morals. If you do not have good integrity and morals, a notary cannot be expected to have good professional responsibilities and ethics. Professions emerge as a result of interactions between fellow members of society, which are born, developed or created by society itself. Theoretically and technically, the notary profession must have professional ethics and responsibility, therefore a notary must be responsible for the deeds he has made, even if the notary's term of office has ended.

A notary as a public official essentially only serves as a constable or relayer or records in writing and authentically the legal actions of interested parties. The notary is not in it. He is an outsider. Those who carry out legal acts are the parties who make and are bound by and by the contents of the agreement, namely the interested parties. The initiative in making a notarial deed or authentic deed lies with the parties. Therefore, a notarial deed or authentic deed does not guarantee that the parties are "telling the truth", but what is guaranteed by an authentic deed is that the parties are "truthfully saying" as stated in their deed of agreement.

The truth of their (the parties') words before the notary which are contained in the deed is not the responsibility of the notary, the notary on the other hand states that the parties are correct in saying that, whether what is said in the deed submitted to the notary contains truth or lies, this is not notary responsibilities. The notary only records what is said by the parties who appear before the notary, if what is said is not true or contains lies and falsehoods, the status of the deed remains genuine and not fake, what is invalid or lies and fake in this case is the statement of the parties submitted to notary, which is then outlined and included in the deed.

Since the beginning of the appearance of the notary, it has been constructed to record the wishes of the parties in a form that has been determined by law and has the power of perfect evidence for the parties. Notary as a noble profession (*Officium Nobile*) plays an important role in social life, especially modern society which requires documentation of a legal event or certain legal act carried out by a legal subject, whether in the sense of a legal subject in the form of a person or legal entity. There are several legal constructions of notary positions since their presence in Indonesia, namely:

1. The notary is not a party to the deed

2. The notary only formulates the wishes of the parties so that their actions are expressed in the form of an authentic deed or notarial deed
3. The desire or intention to make a particular deed will never come from the notary, but definitely comes from the wishes of the parties themselves

Notaries in carrying out their duties and positions have basic principles that are adhered to in assessing a deed, namely the principle of presumption of validity or better known as *presumptio iustae causa*, meaning that a deed made by a notary must be valid until a party declares the deed to be invalid.⁴ Apart from that, the notary when making the deed does not investigate the veracity of the documents submitted by the party making the deed. This means that the notary as a public servant can act quickly and precisely, and it is not the notary's authority to declare whether a document is valid or not in the event of forgery, so the notary only checks the administrative completeness to make a deed. As is known, deeds are generally distinguished between:

- a. Authentic Deed, a deed which is in the form determined by the person in charge in the place where the deed was made (Article 1868 of the Civil Code)
- b. Private deeds are private writings made without the mediation of a public employee (Article 1874 of the Civil Code)

Notaries as public officials who have the authority to make authentic deeds can be burdened with responsibility for their actions in connection with their work in making these deeds.⁵ The scope of a notary's responsibility includes the formal correctness of the deed he or she makes. The responsibility of a notary is explicitly stated in Article 65 UUJN, which states as follows, Notaries, Substitute Notaries, Special Substitute Notaries and Temporary Notary Officials are responsible for every deed they make even though the notarial protocol has been submitted or transferred to the party holding the Notarial Protocol.

The formal responsibility for deeds made before a notary needs to be emphasized that the notary's authority in making authentic deeds does not mean that the notary can freely, according to his wishes, make authentic deeds without the parties asking for the deed to be made. The notarial deed is thus the deed of the interested parties, not the deed of the notary concerned. Therefore, in the event of a dispute arising from an agreement contained in a notarial deed made for them and in the presence of a notary, then those who are bound are those who made any promises or obligations as stated in the notarial deed made in their presence and the notary at all. beyond those who are parties

⁴Habib Adjie, 2018, Indonesian Notary Law, PT. Refika Aditama, Bandung, p. 140

⁵Abdul Ghofur Anshori, 2009, Indonesian Notary Institute, UII Press, Yogyakarta, p. 34

In essence, all actions carried out by individuals, whether intentionally or unintentionally, must ultimately be held responsible, especially if the action is related to a position or profession. Responsibility is a principle of professionalism which is a manifestation of the commitment that a notary must have towards carrying out his or her position as regulated in the UUJN.

The responsibilities of a notary adhere to the principle of responsibility based on fault (based on fault of liability). The principle of responsibility based on errors must fulfill four main elements, namely:⁶

- a. There is Action
- b. There is an Element of Error
- c. There are losses suffered
- d. There is a causal relationship between errors and losses

The following regarding the notary's responsibilities regarding deeds can be divided into 5 points, namely:⁷

- a. Civil Liability

If there is a party who feels disadvantaged by a deed made by a notary, then the person concerned can directly file a civil lawsuit against the notary so that the notary can be held civilly responsible for the deed he made. Claims for reimbursement of costs, compensation and interest against the notary are not based on the position of the evidence which has changed because it violates certain provisions in the UUJN, but are based on the legal relationship that exists between the notary and the parties who appear before the notary. Even if the notary has retired, the notary must still be civilly responsible for the deeds he or she has made.

- b. Criminal Liability

UUJN does not regulate criminal sanctions against notaries, so if a criminal violation occurs by a notary he can be subject to sanctions contained in the Criminal Code, provided that notary punishment is carried out with the following limitations:

⁶Kunni Afifah Journal, Responsibility and Legal Protection for Notaries in Civil Procedure for the Deeds They Make, Master of Notary, Faculty of Law, Indonesian Islamic University, page 153

⁷I Gusti Ayu Ria Rahmawati et al, Journal of Legal Construction Vol.1, Notary's Responsibility for Authentic Deeds He Makes Regarding Retirement Periods, Faculty of Law, Warmadewa University, Denpasar, p. 331

- There is legal action from a notary regarding the external, formal and material aspects of a deed that is deliberate, full of awareness, and planned so that the deed that will be made before a notary or by the notary together with the presenters becomes the basis for committing a criminal act.
- There is legal action from a notary in making a deed in front of or by a notary which, if measured based on the UUJN, is not in accordance with the UUJN
- The notary's actions are not appropriate according to the agency authorized to assess the actions of a notary, in this case the Notary Supervisory Council

c. responsibilities based on UUJN

The responsibility of a notary in the UUJN is explicitly stated in Article 65 of the UUJN which states that, Notaries, Substitute Notaries, Special Substitute Notaries and Temporary Notary Officials, are responsible for every deed they make, even though the notarial protocol has been handed over or transferred to the party holding the notarial protocol.

d. Responsibility based on a code of ethics

There is a correlation between UUJN and the Notary Professional Code of Ethics. The Notary Professional Code of Ethics regulates notaries internally and UUJN externally. Notaries are required to make deeds properly and correctly, meaning that the deeds made fulfill the legal wishes and requests of interested parties because of their position.

e. administrative based responsibilities

Administrative sanctions for notaries regulated in the UUJN have been determined as follows:⁸ Oral Warning, Written Warning, Temporary Dismissal, Respectful Dismissal, Disrespectful Dismissal

The problem of notaries who are still responsible after retirement for the deeds they make can be analyzed using the theory of responsibility according to Hans Kelsen. There are forms of responsibility proposed by Hans Kelsen, namely,

a. Responsibility based on fault (based on fault)

Liability based on fault is a fairly general principle applicable in criminal and civil law. The civil law code, specifically articles 1365, 1366, 1367. This principle states

⁸Chandra Novita, 2017. Responsibility and Legal Protection for Notary Lawyers, LEX Renaissance Journal. No. 2 Vol. 2 July 2017, Faculty of Law, Indonesian Islamic University Yogyakarta p. 339

that a person can only be held legally responsible if there is an element of wrongdoing that he or she has committed.

b. absolute responsibility

This means that an individual is responsible for violations committed because they were unintentional and unexpected

c. collective responsibility,

This means that an individual is responsible for an offense committed by another person

d. individual responsibility.

that is, an individual is responsible for his or her own violations

Hans Kelsen's opinion expressed is in accordance with Article 1365 of the Civil Code which states that every unlawful act that causes loss to another person requires the person who caused the loss to compensate for the loss.

Violations or mistakes (*beroeepsfout*) of a notary in carrying out his office can cause losses to clients or other parties. A notary is deemed responsible only on the basis of the fact that his client feels harmed, but the client must determine and if necessary prove that it is the notary's fault that caused the loss.

The work of a notary can be classified as an obligation to produce (*resultaatsverplichtingen*), meaning that the notary must guarantee or guarantee that the deed made according to the specified form is valid. If a notary makes a deed in the wrong form, then he violates his obligation to produce it and for the losses he causes, the notary must be responsible, unless he is able to prove that the wrong or incorrect form is the will or wish of the parties in a notarial deed.

Based on the description above, it can be seen that the responsibility of a retired notary for deeds made while he was still in office which contain an element of error related to their making in this case is in accordance with the theory of responsibility put forward by Hans Kelsen who briefly states that The notary still has to be responsible for mistakes and violations of the deed he made

Furthermore, regarding the point of view of the time limit for the responsibility of a retired notary for deeds he has made, namely:

a. Civil perspective

Regarding civil liability, it is based on Article 1967 of the Civil Code, that all legal claims are extinguished after the expiration of 30 (thirty) years. After the notary becomes responsible (after the age of 67), the notary is no longer responsible at the age of 97

b. Criminal point of view

Regarding criminal responsibility, it can be based on Article 78 paragraph (1) number 3 of the Criminal Code, that the authority to prosecute criminal charges is extinguished after 12 (twelve) years with the threat of imprisonment of more than 3 (three) years. If it is related to the responsibilities of a notary (after the age of 67 years) then the notary is no longer responsible at the age of 79 years.

In the author's opinion, these two points of view cannot be used in the responsibility of a retired notary for the deeds he or she has made, because it refers to Article 65 UUJN which is clear regarding the time limit for a notary's responsibility, because the time limit for a notary's responsibility is until the notary dies. Even though Article 65 UUJN does not indicate a time limit for liability, the notary must remain responsible until he dies for the deed he has made. This is also in accordance with Hans Kelsen's Theory of Responsibility which states that a person must be legally responsible for a certain act or that he bears legal responsibility.

3.2. Legal protection for werda notaries in relation to deeds made while still in office

Legal protection can be interpreted as providing guarantees or certainty that someone will get their rights and obligations or protection of interests so that the person concerned is safe.⁹Legal protection for Notaries is outlined in Article 66 UUJN which stipulates that for judicial proceedings, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council have the authority to take photocopies of the minutes of the deed and/or letters attached to the minutes of the notary's deed or protocol in the notary's custody. and summon the notary to attend an examination relating to the deed he or she has made or the notarial protocol in his or her custody. Basically, this legal protection is only implied in Article 66 concerning supervision of Notaries which aims to provide legal protection for Notaries in carrying out their duties and positions as Public Officials. Article 66 UUJN stipulates that for the judicial

⁹Ratih Tri Jayanti, 2010, Legal Protection of Notaries in Relation to Deeds They Make When There is a Dispute in the District Court (Case Study of Pontianak District Court Decision No. 72/pdt/PN. Pontianak, Thesis, Notarial Study Program, Diponegoro University Semarang Postgraduate Program, pg 74.

process, investigators, public prosecutors,¹⁰

Apart from Article 66 UUJN, legal protection for notaries is also contained in Article 2 paragraph (2) of the Memorandum of Understanding between the National Police of the Republic of Indonesia and the Indonesian Notary Association (Pol No.: B/1056/V/2006 No. 01/MOU/PPINI/V /2006), which states: "the summons for the Notary-PPAT is carried out after the investigator has obtained approval from the Supervisory Council which is a body that has the authority and obligation to carry out guidance and supervision".¹¹

The memorandum of understanding between INI and POLRI number: 01/MOU/PPINI/V/2006, which essentially regulates the development and improvement of professionalism in the field of law, constitutes a separate legal protection for notaries regarding the confidentiality of their position as a profession based on trust. The memorandum of understanding above is a procedure or procedure that must be carried out if the notary is summoned or questioned by the police. In this case, it regulates the obligations of police investigators, where the summons to a notary must be made in writing and signed by the investigator. The status of the notary must also be written clearly and the reasons for the summons. Through this MOU, if the notary is a witness, the notary may not appear at the trial with sufficient reasons, whereas if he is a suspect,

Legal protection as regulated in UUJN and the Memorandum of Understanding of the Indonesian National Police with THIS applies when the notary is still holding a position as a public official and also applies to notaries who have retired regarding authentic deeds they have made. So, if there is a problem with an authentic deed made by a retired notary, for the judicial process, investigators, public prosecutors or judges still ask for approval from the Notary Honorary Council.

However, the rules regarding legal protection for regional notaries in the UUJN are not explained explicitly, even though he still holds responsibility for the deeds he has made. Notaries who have retired do not receive distributive justice, namely justice related to equal rights,¹² because a retired notary has lost his

¹⁰Putri, KP, (2016), Responsibility and Legal Protection for Retired Notaries Regarding Deeds They Have Made (Analysis of Article 65 and Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, Brawijaya Law Student Journal, page 21. [https:// Hukun.studentjournal.ub.ac.id/](https://Hukum.studentjournal.ub.ac.id/) accessed on July 30, 2023 at.18.07

¹¹Soegianto, 2015, Professional Ethics and Legal Protection for Notaries, CV. Farisma Indonesia, Yogyakarta, p. 110-111

¹²Muhammad Erwin, 2010, Citizenship Education of the Republic of Indonesia, Refika Aditama, Bandung, p. 72

rights in legal protection according to his position even though he still has responsibility for the deed he made when the deed was problematic.

The main ideas regarding the various possibilities for errors by notaries that need to be differentiated are personal errors and errors in carrying out their official duties. For personal mistakes, the mechanism is the same as for ordinary people who can be held accountable, and the same legal protection mechanisms apply as for ordinary people in general. For errors related to the position of a notary, it is necessary to provide a legal protection mechanism that is different from ordinary people even if the notary's term of office has ended or has retired. If there is a notary protection organization, this is actually a filter for the authorities relating to the confiscation of minutes of photocopies of minutes of deeds, and a filter for cases of parties that are not relevant to the notary.¹³

In this way, it will be more secure if all acts of summons, examination and detention are carried out after obtaining permission from the professional organization that examines them first, so that in the end legal certainty will be created for the public in accordance with the principles of trust that underlie the authority of a notary.

4. Conclusion

In accordance with the provisions of Article 65 UUJN, that a notary is responsible for every deed he makes even though the notary protocol has been submitted and transferred to the party holding the notary protocol, this article means that the responsibility of a retired Notary for deeds made while still in office remains borne. until he died. Legal protection for retired notaries for deeds made while still in office. In fact, UUJN does not contain an explicit article explaining the legal protection for retired notaries, but if you look closely, legal protection for retired notaries is contained in the Memorandum of Understanding between the Police. RI with the Indonesian Notary Association and in Article 66 UUJN. This article means that legal protection applies to notaries who are still serving and those who have retired. Because the responsibility of a notary is for life, the legal protection for notaries in Article 66 UUJN also applies until the notary dies.

5. References

Journals:

¹³Nala Aprilia, 2020, Liability of a Regional Notary for Deeds Made During His Term of Office, LEX Renaissance Journal, No. 2 Vol 5. Faculty of Law, Indonesian Islamic University, Yogyakarta. matter. 483

Chandra Novita, 2017. Tanggung Jawab dan Perlindungan Hukum Terhadap Werda Notaris, *Jurnal LEX Renaissance*. No. 2 Vol. 2 July 2017, Fakultas Hukum Universitas Islam Indonesia Yogyakarta.

I Gusti Ayu Ria Rahmawati Dkk, *Jurnal Konstruksi Hukum* Vol.1, Tanggung Jawab Notaris Terhadap Akta Otentik Yang Dibuatnya Terkait Jangka Waktu Pensiun, Fakultas Hukum, Universitas Warmadewa, Denpasar.

Jurnal Kunni Afifah, Tanggung Jawab dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya, Magister Kenotariatan Fakultas Hukum, Universitas Islam Indonesia.

Nala Aprilia, 2020, Pertanggungjawaban Notaris Werda Atas Akta Yang Pernah Dibuat Dalam Masa Jabatannya, *Jurnal LEX Renaissance*, No. 2 Vol 5. Fakultas Hukum Universitas Islam Indonesia Yogyakarta.

Putri, K.P, (2016), Tanggung Jawab dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta Yang Pernah Dibuatnya (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, *Brawijaya Law Student Journal*, <https://hukum.studentjournal.ub.ac.id/> accessed on 30 July 2023 at 18.07

Ratih Tri Jayanti, 2010, *Perlindungan Hukum Notaris Dalam Kaitannya Dengan Akta Yang Dibuatnya Manakala Ada Sengketa Di Pengadilan Negeri (Studi Kasus Putusan Pengadilan Negeri Pontianak No. 72/pdt/PN. Pontianak*, Tesis, Program Studi Kenotariatan, Program Pascasarjana Universitas Diponegoro Semarang.

Books:

Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia*, UII Press, Yogyakarta.

G.H.S Lumbon Tobing, 1980, *Peraturan Jabatan Notaris*, Erlangga, Jakarta.

Habib Adjie, 2018, *Hukum Notaris Indonesia*, PT. Refika Aditama, Bandung.

Muhammad Erwin, 2010, *Pendidikan Kewarganegaraan Republik Indonesia*, Refika Aditama, Bandung.

Nico winanto, 2003, *Tanggung Jawab Notaris Selaku Pejabat Umum*, Contractor Documentation, and Studies of Busines Law (CDSBL), Yogyakarta.

Soegianto, 2015, *Etika profesi dan Perlindungan Hukum Bagi Notaris*, CV. Farisma Indonesia, Yogyakarta.

Regulation

The 1945 Constitution of the Republic of Indonesia

Criminal Code

Code of Civil law

Law No. 2 of 2014 concerning Notary Positions