

## **Legal Aspects of the Notary's Role in Protecting Parties from Substantial Errors in Making Authentic Deeds**

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**Abstract.** *A notary is a public official who is appointed by the Government and then given the authority to serve the public in carrying out agreements and making and validating authentic deeds in a professional manner before the parties. However, if a Notary makes a writing error in an authentic deed, there will be a change in the meaning of the substance of the deed so that it becomes a source of lawsuits in the future by the parties who feel aggrieved. The method in this research is normative juridical. Juridical approach to law is seen as a norm called *das sollen*, because in this study it uses written legal materials in the form of a statute. The normative approach which analyzes the problem using legal materials with data obtained comes from document studies in the form of decisions and several scientific journals to analyze legal aspects and responsibilities of the role of a notary in protecting the parties for substantive errors in making authentic deeds. The research results obtained are: Notary formal aspects regarding criminal cases when making a letter that is not in accordance with legal actions, and using fake or falsified letters a Notary can be entangled in criminal law in Article 263 paragraph (1) and paragraph (2) of the Criminal Code . Responsibility is an obligation for public officials for authentic deeds made before the parties as regulated by Law Number 02 of 2014 concerning Notary Officer and using fake or falsified letters a Notary can be entangled in criminal law in Article 263 paragraph (1) and paragraph (2) of the Criminal Code. Responsibility is an obligation for public officials for authentic deeds made before the parties as regulated by Law Number 02 of 2014 concerning Notary Offices and using fake or falsified letters a Notary can be entangled in criminal law in Article 263 paragraph (1) and paragraph (2) of the Criminal Code. Responsibility is an obligation for public officials for authentic deeds made before the parties as regulated by Law Number 02 of 2014 concerning Notary Offices.*

**Keywords:** *Authentic; Mistakes; Parties; Protection; Substance.*

## 1. Introduction

Notary is a profession that society needs today. The role of a Notary in society is as a public official who has the authority to make authentic deeds regarding all legal actions required by the community.<sup>1</sup>A notary is a public official who has the authority relating to all legal acts, agreements and determinations by general regulations and is required to be stated in an authentic deed.<sup>2</sup>

## 2. Research Methods

The approach method in this research is normative juridical. Juridical approach (law seen as a norm is called *das sollen*), because this research uses written legal materials in the form of legislation. Research specificationsThe normative juridical research method uses a deductive thinking method system, namely by drawing general conclusions that have been proven to be true and these conclusions are aimed at something specific.

## 3. Results and Discussion

### 3.1. Legal Aspects of the Notary's Role in Protecting Parties from Substantial Errors in Making Authentic Deeds

An authentic deed made by a Notary has valid evidentiary power for the parties executing the agreement. An authentic deed is a deed that is perfect and strong when used as evidence to the public.<sup>3</sup>According to Law Number 2 of 2014 concerning the Position of Notary Public, the definition of a Notarial Deed is a deed made and stipulated in statutory regulations.<sup>4</sup>According to Tan Tong Kie, a Notary has the duty and authority to establish legal relations with the parties in written form with a certain format so that it is formed into an authentic deed which has force in a legal process.<sup>5</sup>

However, in the practice of making notarial deeds, errors still occur in making deeds. Errors that often occur in notarial deeds are errors in typing authentic deeds. Writing errors in authentic deeds are usually called *renvoi*. *Renvoi* is carried out by a Notary by correcting writing errors in the authentic deed he has signed.

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1A, Widhiyanti, HN, & Susilo, H. Juridical Implications for Land Deed Officials Receiving Power of Attorney to Deposit Income Tax Money/Dues for Acquisition of Land and Building Rights from Taxpayers. Scientific Journal of Pancasila and Citizenship Education, Faculty of Law, Brawijaya University. 2017.Pg.19.

<sup>3</sup> Herlin Budiono, 2013, Basic Techniques for Making Notarial Deeds, First Printing, PT. Citra Aditya Bakti, Bandung, Page. 1

<sup>4</sup>Article 1 paragraph 7 of the Notary Position Law

<sup>5</sup>Tan Tong Kie, 2000, Notarial Studies, Book I, PT. Van Hoeve's New Ichtiar, Jakarta, Page 159

In this research, there are 3 cases that have become literature material related to the legal aspects of the role in protecting parties from substantive errors in writing authentic deeds as follows:

a. Decision Number Decision Number 72/PDT/2018/PT YYK. is a decision regarding the annulment of a Notary's authentic deed because there is a substantive error in the deed. One example of the description of Decision Number 72/PDT/2018/PT YYK above, changes in the contents of the deed without the knowledge of the parties so that errors occur has become the focus of related problems. However, the Notary ratified the deed without any endorsement from all parties concerned in the power of attorney. .

b. Tri Wahyuni Limbong's scientific work, 2021, Journal of the University of North Sumatra with the title Juridical Analysis of the Validity of Lease Deeds Rented Unilaterally (Decision Study Number 146/PDT/2018/PT.Bdg), Journal of Legal Studies Vol 2. No 3, with formulation Problems: (1) What is the validity of the lease deed which is revised or changed unilaterally? (2) What is the responsibility of the Notary regarding the validity of the lease deed which is revised or changed unilaterally?

Furthermore, this research discusses the validity of deeds carried out unilaterally by a Notary so that they are null and void because they are considered to cause losses to the party or other parties. In the journal it was stated that there had been fraud in the agreement without the knowledge of the party facing it. The facts revealed were that the trial found that the copy of the minutes of the deed did not match the copy of the deed.

In the Deed there are strokes, turns, insertions, additions and appear to be overlapping, not typos. However, the Panel of Judges decided to reject the lawsuit on the basis that the Plaintiff only argued with unnecessary arguments and was not accompanied by valid evidence at trial.

b. Research from I Gede Yudi Arsawan and Ahmad Budi Cahyono, 2021, Journal of the University of Indonesia with the title Legal Protection for Clients for Making Deeds Before an Illegal Substitute Notary, Journal of Notarial Law Vol.6. No. 3, with problem formulation (1) What are the legal consequences of deeds made by substitute notaries in the city of Semarang? (2) What is the legality of the deed made by a substitute notary in Semarang City? This research discusses the legal consequences of making an authentic deed from an invalid substitute Notary accompanied by Surabaya Court Determination Number 728/PDT/P/2020/PN.Sby which shows that the making of the Notary's deed is invalid so that it turns into a private deed in accordance with Article 44 jo Article 84 UUJN and Article 1869 Civil Code.

The Notary's authority to correct errors in writing a deed is contained in Article 51 paragraph 1 of Law Number 2 of 2014 concerning the Position of a Notary Public which states that a Notary has the authority to correct writing errors or typing errors contained in the minutes of an authentic deed that has been signed. Authentic deeds are used as the strongest evidence and have an important role in society.

It can be understood that an authentic deed can guarantee the rights and obligations of the parties, legal certainty as well as avoid disputes in the future. However, disputes over authentic deeds have been proven in the cases mentioned above. Even though deed disputes cannot be avoided, dispute resolution is resolved by having an authentic deed as the strongest evidence when in court

Posita or arguments for a lawsuit are the basis for examining and resolving a case. According to Article 1865 of the Civil Code, it is stated that every person who claims a right to confirm his or her right or dispute another person's right is obliged to prove that right. An authentic deed is perfect evidence, so the authentic deed must be seen according to what existed when the legal action took place without adding anything that did not exist when the parties appeared. In the case of research research from I Gede Yudi Arsawan and Ahmad Budi Cahyono, the making of an authentic deed from an invalid substitute Notary was accompanied by Surabaya Court Determination Number 728/PDT/P/2020/PN.Sby which indicated that the making of the Notary's deed was invalid so that changed into a deed under the appropriate hand.

A private deed has the power of proof as long as the parties admit that it is true that it has been agreed and the strength of the private deed is as strong as an authentic deed. However, if one of the parties does not confirm the existence of the agreement, the party who refuses will have the burden of proof and then submit it to the Panel of Judges. Authentic deeds and private deeds in particular must contain the elements of an agreement based on Article 1320 of the Civil Code which materially binds the parties concerned in accordance with Article 1338 of the Civil Code as an agreement that must be obeyed by all parties (*Pacta sunt servanda*).

The authentic deed contains agreement documents so that in the trial the authentic deed becomes perfect evidence and the judge only needs to see the authentic deed so there is no need to show the parties' documents. In a deed there are functions related to legal actions, including the function of determining the validity or terms of formation and the function as evidence. Perfect and complete evidence has different minimum limits.

According to Sudikno Mertokusumo, a deed is a letter containing a signature at the time of the event which is the basis of a haka or an agreement that was made deliberately from the start for proof.<sup>6</sup>In its implementation, notarial deeds have legal aspects that are inherent to each other. However, this aspect can be seen entirely as a form of proof of the authenticity of a Notary's authentic deed.

In a Notary's deed there are external aspects contained in the Supreme Court's jurisprudence if the Notary is used as evidence regarding the implementation of the Notary's duties. Looking at the case study of Decision Number 146/PDT/2018/PT.Bdg Tri Wahyuni Limbong's scientific work, 2021, Journal of the University of North Sumatra from and Decision Number 72/Pdt/2018/PT.YYK above proves that a Notary is not easily punished because the Notary functions to write and compile everything that has been agreed upon by the parties. A Notary has no obligation to materially investigate anything said by all these parties.<sup>7</sup>

However, starting from the problem of research from I Gede Yudi Arsawan and Ahmad Budi Cahyono, 2021, Journal of the University of Indonesia with the title Legal Protection for Clients for Making Deeds Before an Illegal Substitute Notary, study of Surabaya Court Determination Decision Number 728/PDT/P/2020/PN.Sby and Decision Number 72/Pdt/2018/PT.YYK regarding an invalid deed due to the carelessness of a Notary, thereby changing the content and meaning of the legal event. In this case, the incident becomes a formal criminal and civil aspect related to:

- a. The presenter knows the exact date, month, year and time to appear before the General Official
- b. Anyone who is a party to a General Official
- c. Facing signature
- d. The copy of the deed does not comply with the Minutes of Deed
- e. A copy of the deed, without a Deed Minutes being made
- f. The minutes of the deed do not have a complete signature, but a copy of the deed is still ratified and issued.

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<sup>6</sup>Sudikno Mertokusumo, 2006, Indonesian Civil Procedure Law, Liberty, Yogyakarta, first printing seventh edition, Page 149

<sup>7</sup>Habib Adjie, 2008, Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama Bandung, Page 74

Formal aspects of the Notary regarding criminal cases, investigators, public prosecutors and judges will still provide legal action to the Notary if:

- a. Making letters that are not in accordance with legal acts, and using fake or forged letters are included in Article 263 paragraph 1 and paragraph 2 of the Criminal Code
- b. Committing forgery is contained in Article 263 paragraph 264 of the Criminal Code
- c. Ordering to do or doing by ordering to forge fake or forged documents is included in Article 56 paragraphs 1 and 2 in conjunction with Article 263 paragraphs 1 and 2 of the Criminal Code or Article 264 of the Criminal Code and Article 266 of the Criminal Code.

During an examination of a Notary who has the status of a defendant or suspect, it is discovered that the procedures for making a Notarial deed are:

- a. Introducing the parties who appear before the General Official by showing the parties' real identities
- b. Listen, observe and ask about the aims and objectives of the parties in seeking legal action by conducting questions and answers between public officials and the parties
- c. Have examined documentary evidence relating to legal actions to be carried out by the parties
- d. Provide advice and direct the parties regarding the deed that will be made later to the parties
- e. Fulfill administrative requirements in making a Notarial deed, by reading, signing, providing a copy and filing minutes of the deed
- f. Carrying out obligations as a Notary.<sup>8</sup>

The judge in a court has applied the law to a particular law or determined a case that applies appropriate law as a basis for determining a decision. In the dispute process in court, the parties submit conflicting arguments to each other, therefore, a judge must examine and determine the correct arguments from the

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<sup>8</sup>Nasir, Gamal Abdul. 2011. Legal Aspects of Sanctions Against Notaries Who Violate Provisions in Making Deeds Based on Law No. 30 of 2004 concerning the Position of Notaries. Thesis. University of Indonesia. Depok. Hal. 31-33

statements of the parties making the dispute. When proving a part of civil procedural law, by providing rules regarding the progress of a case before the Court and the importance of the law of evidence as regulated in the Civil Code which regulates material legal provisions.<sup>9</sup>

According to Article 1870 of the Civil Code, an authentic deed provides the party who makes it with perfect proof of what is contained therein. This formulation makes it easier for judges not to need to re-examine authentic deeds as perfect proof of what is contained therein. According to Article 1881 paragraph 2, it is explained that the judge is free to determine whether the evidence is valid or not because a private deed does not have formal and material evidentiary power, if the parties have acknowledged its truth.<sup>10</sup>

According to civil procedural law, a private deed is written evidence with different evidentiary strength from an authentic deed. The things that differentiate are:

- a. An authentic deed contains a definite date, whereas the certainty of the date for private deeds is not always the case
- b. Authentic gross deeds have executorial power like a judge's decision, while private deeds do not have executorial power.
- c. The possibility of losing a private deed is greater than an authentic deed.

### **3.2 Responsibilities Not quite enough Notary's Responsibilities in Protecting Parties from Substantial Errors in Making Authentic Deeds**

An agreement arises from the agreement of both parties as it can be cancelled, changed and said to be valid only by the person making the agreement.<sup>11</sup> Responsibility is an obligation for public officials as regulated by Law Number 2 of 2014 concerning the Position of Notaries. Actions that cause losses to the parties appearing are a violation for the Notary. This unlawful act is a condition for carrying out responsibility in accordance with Article 1365 of the Civil Code

In accordance with Decision Number: 72/Pdt/2018/PT.YYK, the Notary made a mistake in making the deed without the knowledge of the parties concerned,

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<sup>9</sup>Nur Rasaid, 2010, Civil Procedure Law, Sinar Graphics, Jakarta, p.38

<sup>10</sup>Nawawi Arman, 2011, Notarial Deed as Perfect Evidence, Media Ilmu, Jakarta, Page 12

<sup>11</sup>Sugondo Raden Notodisuryo, 2000, Notary Law in Indonesia: An Explanation, Rajawali Pers, Page 34

thus requiring a renvoi. The responsibilities of a Notary include fulfilling the following basic elements:

There is an act, there is an element of error, there is a loss suffered, there is a causal relationship between the error and the loss<sup>12</sup>

Substantial errors in making a Notarial deed are an element that is contrary to legal responsibility. In accordance with research document study Research from I Gede Yudi Arsawan and Ahmad Budi Cahyono, 2021, Journal of the University of Indonesia with the title Legal Protection for Clients for Making Deeds Before an Illegal Substitute Notary, study of Surabaya Court Determination Number 728/PDT/P/2020 /PN.Sby and Decision 72/Pdt/2018/PT.YYK which explains that every legal act carried out by a Notary has the potential to have positive or negative legal consequences. If the resulting legal consequences are negative then the Notary will also bear the consequences of the losses caused.<sup>13</sup>This is a legal consequence made by the Notary as this case can cause losses for the parties facing it. According to Article 84 of Law Number 2 of 2014 concerning the Position of Notary, clients can claim loss rights for deeds that have been degraded into private deeds by showing the deed as evidence. Claims for compensation submitted to the Court by the parties must prove and explain in detail the amount of loss that is not stated in the estimates or assumptions.<sup>14</sup>

In terms of responsibility, the Notary's role in protecting the parties against errors in authentic deeds is divided into three, namely:

a. Civil Liability

An authentic deed is a deed that will not be canceled if an error occurs. Corrections to an authentic deed can only be made by the parties who entered into the agreement before a Notary. However, the erroneous deed must still be stored in the deed making protocol. A Notary is required to guarantee legal protection for the parties who appear before him. A Notary's services should be carried out professionally towards the parties in carrying out their duties and obligations as a public official who has the authority to make authentic deeds. According to Article 1367 of the Civil Code, it explains that:

*"A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control."*

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<sup>12</sup>Ibid, Pg.22-23

<sup>13</sup>Putra, F and Anand, G. 2018. Legal Protection for Parties Who Are Injured by Legal Counseling by Notaries. HUMANI Journal (Law and Civil Society). Vol.8 Number 2. Pg.122

<sup>14</sup>Azikin, Z. 2015. Indonesian Civil Procedure Law. Prenamedia Group.Jakarta.Pg.63



Therefore, if there is a party who feels that what a Notary has done has caused harm but the violation cannot be proven to be true, then the court cannot grant the lawsuit. This shows that if you want to make an agreement. If the court cancels the authentic deed, the deed is null and void and cannot be used again. Then the parties must re-draw a new authentic deed.

#### b. Criminal Liability

In a criminal act that occurs involving a Notary. In this case, the role of a Notary is very much needed in examining a criminal act. If a Notary is proven to have participated in forging documents, embezzling, controlling someone else's property, selling, exchanging, or encumbering a mortgage so that a right arises then this is regulated in Article 15 of Law Number 02 of 2014 concerning the Position of Notary. Seeing this, the role of a Notary in being responsible for errors in the substance of an authentic deed, let alone violating a criminal act, this responsibility will be borne by the Notary.

#### c. Administrative Accountability

The responsibility of a Notary can also be subject to administrative responsibility as stated in Article 5 paragraph (1) letter b Permenkumham No. 61 of 2016, regulates that: "The Regional Supervisory Council can impose a written warning sanction on a Notary in the event that the Notary does not carry out his obligations in carrying out his position as a Notary in accordance with the provisions of Article 16 paragraph (1) letters a to letter l of the Law." Based on Article 9 paragraph (1) letter c of Law Number 02 of 2014 concerning the Position of Notaries, it regulates that "Notaries are temporarily dismissed from their positions for committing disgraceful acts". Therefore, it is understandable that a Notary must also adhere to the Notary Code of Ethics

### **4. Conclusion**

Notaries as public officials must uphold the applicable code of professional ethics for public officials. When changing an authentic deed, the Notary is obliged to notify all parties so that they are aware of the changes to the authentic deed with the signatures of the parties as proof of agreement to the renvoi. This is to maintain the code of ethics and dignity of Notaries as Public Officials in the eyes of the general public. In carrying out his position, the Notary is able to provide information in the form of legal counseling to clients who wish to carry out legal actions before him. Because renvoi in an authentic deed without the knowledge of the parties is an unlawful act, this is a manifestation of the Notary's responsibility in protecting the parties to avoid deed disputes in the future.

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