

## **The Responsibilities of Notary Staff as Witnesses for the Confidentiality of Deed Contents in Semarang Regency**

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**Abstract.** *In carrying out his/her duties, a Notary needs employees to manage the administration of his/her office. This authority can be legally delegated by employees with provisions as regulated by binding law. Thus, the Notary staff has wide access to a deed made by or before a Notary where he/she works. In other words, the deeds can be easily read and the contents can be known by people who are not parties or heirs of the parties to the agreement. The research approach method uses the type of research used in this study is Juridical-Normative which means an approach that refers to the applicable legal and regulatory rules. In normative juridical research basically refers to activities that examine internal aspects in order to solve problems of positive law. Therefore, research with this approach has a method of legislation reviewed from the aspect of a value of legislation (vertical) and the relationship with legislation (horizontal). The research results show that: First, Notary staff can be held criminally or civilly liable for misuse of confidentiality, the obligation of notaries and notary office staff to keep the contents of the deed or information required in making an authentic deed confidential. Second, Therefore, Article 322 of the Criminal Code cannot be applied to witnesses because their capacity as witnesses is not attached to a professional position. Witnesses who do not maintain the confidentiality of Notary documents are classified as unlawful acts.*

**Keywords:** *Legal; Notary; Witness.*

## 1. Introduction

Indonesia is a country based on law as stated in Article 2 paragraph 1 of the Constitution of the Republic of Indonesia. This also makes all forms of ownership. These material and non-material assets must be proven by a valid letter of ownership recognition that is recognized by the State. In terms of its creation, these letters must be made by an institution or agency that is authorized and has the capacity and legal force to create and issue the letter. That is why a Notary is needed.

Notary is a general official who is authorized to make authentic deeds in almost all legal acts as long as the law does not grant such authority to other officials. Notaries are given the title of general official because Notaries are appointed and dismissed by the State (in this case represented by the Government through the Minister whose field of duties and responsibilities includes the field of notary, for the current cabinet this is the Minister of Law and Human Rights).<sup>1</sup>

The definition of a Public Official is an Official who is appointed and dismissed by general authority (the state is represented by the Government), and is given the authority and obligation to serve the public in certain matters, therefore he/she also carries out the authority of the Government. This is what distinguishes a Notary from other Officials in society, because although other Officials are also appointed by the Government or receive permission from the Government, the nature of the appointment is only the granting of permission or a license to carry out a position, not directly as a State office holder.

The authority of a Notary is stated in Article 15 paragraph (1), (2) and (3) of the UUJN. Article 2 of the UUJN stipulates that a Notary is appointed and dismissed by the government, in this case the minister in charge of notaries. Article 1 number 14 of the UUJN essentially states that a Notary, although administratively appointed and dismissed by the government, does not mean that the Notary is subordinate to the one who appointed him, namely the government.

As a public official, a Notary must be professional and independent (impartial). The Notary is tasked with establishing the will of the parties who will enter into an agreement in a legal act (Partij Acten) or establishing a legal event in the making of a deed of minutes (process Verbaal Acten).

The authority of a Notary in making an authentic deed must be in accordance with the provisions of Article 1 number 7 of the Notary Law and Article 1868 of the Civil Code as a requirement for the validity of making a deed, namely it must meet the following requirements:

1. The deed must be made by/or before a public official.
2. The deed must be made in the form specified by law.
3. The public official by/or before whom the deed is made must have the authority to do so in the place where the deed is made.

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<sup>1</sup>Sutan Rachmat, 2009, Legal Protection for Notaries Based on UUJN No. 30 of 2004, Pustaka Ilmu, Jakarta, page 53.

Regarding the authority that must be possessed by a public official to make an authentic deed, a Notary may only perform or carry out his office in all areas designated for him and only in that legal area he has the authority. A deed made by a Notary outside his legal area (his area of office) is invalid.

The scope of a notary's responsibility includes the material truth of the deeds he has made. Regarding the responsibility of a notary as a public official related to material truth, it can be classified into four points, namely:

1. The notary's civil responsibility for the material truth of the deeds he makes;
2. The notary's criminal responsibility for the material truth of the deeds he makes;
3. The notary's responsibility based on the PJN for the material truth in the deeds he makes;
4. The responsibility of a notary in carrying out his/her duties is based on the notary's code of ethics.<sup>2</sup>

Notary is required to be honest, trustworthy, thorough, impartial in carrying out his duties as a public official making authentic deeds. The impartiality of a notary is seen from the rights and obligations clauses contained in the authentic deeds he makes which do not provide benefits to one party to the detriment of the other party.

In Islamic studies, honest and trustworthy behavior is the most important morality in carrying out various things, especially in carrying out work that has been mandated. In the Qur'an it is mentioned in the letter QS al-Maidah: 8:

**God willing prayer** يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ **God willing** عَلَى

Meaning: "O you who believe! Be you upholders of justice for Allah, (when) being witnesses fairly. And let not your hatred of a people encourage you to act unjustly. Be fair. Because (just) is closer to piety. And fear Allah, indeed, Allah is careful in what you do."

Honesty is a moral aspect that has positive and good values. Honesty has other words such as being frank. The opposite of honesty is lying, cheating and others. In the nature of honesty also involves an attitude of loyalty, fairness, sincerity and trustworthiness. Honesty is a trait that is valued by many ethnic cultures and religions. So, not only Islam requires its followers to uphold the nature of honesty. Honesty can also mean doing a job sincerely and as well as possible. Even though doing the job is not supervised by others, you still have to do it honestly.

Giving rights to those who deserve rights. This can also be called honest behavior. Giving rights to others to people who can be trusted as an extension in carrying out obligations or professions is a mandate and mandate that must be

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<sup>2</sup>Ellise T. Sulastini and Aditya Wahyu, 2010, Notary's Responsibility for Deeds Containing Criminal Indications, Refika Aditama, Bandung, page 19.

carried out with full trust and great responsibility. In Islam it has been taught that work that has been given to someone must be carried out with trust.

This is emphasized by the word of Allah that fulfilling the mandate must be supported by adequate knowledge and understanding, so that the mandate that has been given can be carried out well and can be accounted for. This affirmation is found in the Qur'an, Surah Al-Isra: 36:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ ۚ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ  
كَانَ مَسْئُولًا

*"And do not follow what you have no knowledge of. Indeed, hearing, sight and heart, all of them will be called to account."*

In carrying out his/her duties, a Notary needs employees to manage the administration of his/her office. This authority can be legally delegated by employees with provisions as regulated by binding law. Thus, the Notary staff has wide access to a deed made by or before a Notary where he/she works. In other words, the deeds can be easily read and the contents can be known by people who are not parties or heirs of the parties to the agreement.<sup>3</sup>

The problem regarding the disclosure of the confidentiality of authentic deeds that exist due to negligent and less than thorough actions or carelessness of Notaries or Notary employees that cause other parties to suffer losses, a Notary can only be subject to sanctions in the form of verbal warnings up to dishonorable dismissal in accordance with Article 16 Paragraph (11) of the Notary Law. In the problems that have been described, it should be possible for Notaries to be held civilly liable. However, the Notary Law as the parent regulation of the notary's office has not yet made regulations regarding the civil liability of notaries who disclose the confidentiality of deeds.

There are some notary employees who do not understand that a notarial deed is a deed that must be kept confidential and cannot be known by parties who are not interested in the deed. If a notary cannot maintain the confidentiality of what he has made, then the hopes of the parties in the deed will not be protected by being known by parties who are not involved in the deed.

Not only the confidentiality of the deed must be kept confidential, but everything related to the notary's office will be vulnerable to being opened to the general public which should be confidential. As long as the Notary employee works in the Notary's office concerned, he will automatically learn in practice both about making deeds and about the management of his office, so there needs to be clear regulations about more detailed arrangements for every action or deed that regulates the Notary employee in maintaining the confidentiality of the deed.<sup>4</sup>

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<sup>3</sup> Sjaifurrachman and Habib Adjie, 2011, *Aspects of Notary Responsibility in Making Deeds*, Mandar Maju, Bandung, page 195.

<sup>4</sup> Habib Adjie, 2013, *Weaving Thoughts and Opinions About Notary*, ImageAditya Bakti, Bandung, page. 113.

## 2. Research Methods

This research uses the type of research used in this research is Juridical-Normative, which means an approach that refers to applicable legal rules and legislation.<sup>5</sup> Normative legal research basically refers to activities that examine internal aspects in order to solve problems of positive law. The author in this study used a qualitative approach which became study, go directly to get certainty with data collection, where the qualitative research approach is based on sampling by collecting data to research data analysis. In collecting research data, researchers use interviews to obtain primary data.

## 3. Results And Discussion

### 3.1. Responsibility of Notary Staff for Confidentiality of Deed Contents

One of the obligations of a deed witness is to keep the contents of the deed and the information obtained in making an authentic deed confidential in order to protect the interests of the community, especially the parties related to the deed until the end of his life even though the deed witness is no longer working at the notary's office concerned. Based on this obligation, it can be seen that the obligation to keep the contents of the deed confidential is not for the benefit of the Notary himself, but for the benefit of the community who have given their trust to the Notary.

Therefore, on the basis of this, the obligation to keep the contents of the deed confidential is not only owned by the Notary, but also all parties present at the time of making the authentic deed, including witnesses to the deed. Witnesses to the Notary's deed are witnesses who participate in making their deed, providing testimony about the truth of the existence and fulfillment of the formalities required by Article 38 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to the Law. Usually, the ones who become instrumental witnesses are the Notary's Staff themselves, however not everyone can be accepted to be witnesses, those who are accepted as witnesses are people who meet the specified requirements, The position of the Witness related to the obligation of the Notary to keep confidential all matters relating to the deed made by him based on Article 16 paragraph (1) letter f of the Amendment UUJN and Article 40 of the Amendment UUJN still contains unclear legal norms.

Therefore, Article 322 of the Criminal Code cannot be applied to witnesses of the deed because their capacity as witnesses is not attached to their professional position. Witnesses who do not maintain the confidentiality of Notary documents are classified as unlawful acts.

Considering that the Notary Law does not regulate the obligation of confidentiality for Notary Staff, in the event of disclosure of client secrets by the Notary's Staff without the Notary's knowledge, the provisions of Article 1365 of the Civil Code in conjunction with Article 1367 of the Civil Code will apply, and

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<sup>5</sup> Bambang Sunggono, 2003, Legal Research Methodology, PT. Raja, Jakarta, p.32.

thus the notary is obliged to be responsible for unlawful acts committed by his Staff, and can be sued to pay compensation by the party who feels that his rights have been harmed due to the disclosure of the Notary's professional secrets.

Article 1365 and Article 1367 of the Civil Code read as follows: Article 1365 of the Civil Code Every act that violates the law and causes loss to another person requires the person who caused the loss due to his/her fault to replace the loss.

### **3.2. Legal Consequences of Notarial Deeds Where Confidentiality is Not Maintained by Notarial Staff**

The obligation for a Notary to keep the contents of the deed and all information obtained in making this deed is intended to protect the interests of the parties related to the deed. If it turns out that the Notary who is summoned for examination reveals secrets and provides information that should be kept confidential, then the party who feels aggrieved can report the Notary to the authorities. One of the formal requirements that must be present in a Notarial deed is the presence of 2 (two) witnesses whose identities are stated explicitly at the end of the deed.

This is expressly stated in Article 40 paragraph (1) of the UUJN which states "Every Deed read by a Notary must be attended by at least 2 (two) witnesses, unless statutory regulations specify otherwise". In the scope of notary affairs, two types of witnesses are known, namely familiar witnesses and instrumental witnesses. Notary deed witnesses are witnesses who participate in the making of the deed (instrument), therefore they are called instrumental witnesses (*instrumentaire getuigen*).<sup>6</sup>

However, in making a deed, it will also involve other parties as witnesses to a deed or known as instrumental witnesses. Generally, the staff at the notary's office are made witnesses to the deed. Instrumental witnesses are not responsible for the contents of the deed. By law, it is not strictly required for witnesses to keep the contents of the deed confidential, so that the provisions of Article 322 of the Criminal Code cannot be applied to these instrumental witnesses. Instrumental witnesses in their position as witnesses do not hold a position or job as referred to in the article.

Therefore, if an instrumental witness leaks the contents of a deed, then this act constitutes an unlawful act as referred to in Article 1365 of the Civil Code.<sup>7</sup>In Article 40 of the Amendment UUJN, it has been clearly regulated regarding witnesses in the inauguration and making of notarial deeds in the form of requirements for witnesses. The actions of notary staff as witnesses to the deed who leak the secret of the deed can be said to be an unlawful act. This is interpreted as any act that is contrary to the rights of others arising from the law.

The material unlawful nature means violating or endangering the public interest that the law maker has the right to protect in the formulation of a particular

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<sup>6</sup>Komar Sugondo, 2000, *Notary at a Glance*, Second Edition Alumni, Bandung, p. 268

<sup>7</sup>8 GHS Lumban Tobing, 1999, *Notary Regulations*, Erlangga, Jakarta, page 170.

crime. Formally the unlawful nature means that all written parts of the formulation of the crime have been fulfilled.<sup>8</sup>

This act can be categorized as an unlawful act as regulated in Article 1365 of the Civil Code, which states that "Every unlawful act that results in loss to another person requires the person whose fault caused the loss to compensate for the loss."

Thus, based on the analogy, it can be said that the witness of the deed also has an obligation to keep the contents of the deed and the information obtained in the making of the Notarial deed confidential. This obligation does not only apply when the witness of the deed is called as a witness in an investigation or trial before a judge, but also outside of these circumstances and for violations of these provisions, the notary staff as a witness to the deed can be sued for compensation if their actions in leaking the secret of the deed cause losses to the party interested in the deed.<sup>9</sup>

#### **4. Conclusion**

Notary staff can be held criminally or civilly responsible for misuse of confidentiality. The obligation of notaries and notary office staff to keep the contents of the deed or information required in making this authentic deed confidential is attached for life, even though he is no longer working at the notary's office or as a former notary staff.

In essence, the Notary and also the Notary Staff who become witnesses to the deed (instrumental witnesses) have an urgent position to maintain the confidentiality of the deed as mandated by law. The position as a witness related to the deed can be a witness to the deed or as a witness to a legal case related to the deed. Those who are obliged to keep the contents of the deed and the information obtained in making the deed are not only the Notary, but all those in the room at the time of the deed verification, including the witnesses to the deed.

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<sup>8</sup>D. Schaffmeister, N. Keijer and EPH Sutorius, 2004, Criminal Law, Consortium of Legal Sciences, Department of Education and Culture, Yogyakarta, p. 67.

<sup>9</sup>Habib Adjie, 2015, Thematic Interpretation of Indonesian Notary Law (Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary), Refika Aditama, Bandung, p. 185.

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