

Notary's Responsibility for Loss of Minutes of Deed Due To Negligence

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Abstract. *The implication of the Notary's obligation to keep the minutes of the deed, if the minutes of the deed are lost due to his or his employees' carelessness, it can be said that the Notary has not carried out his obligations, and is subject to sanctions ranging from written warnings to dishonorable dismissal. The purpose of this study is to determine and analyze: 1). The Notary's responsibility for the loss of minutes of the deed due to his negligence. 2) Application of Notary Sanctions whose Negligence Resulted in the Loss of Minutes of the Deed and the Obligation to Keep Minutes of the Deed. The approach method in this study is sociological juridical. The data used are primary and secondary data obtained through interviews and literature studies. The technique of collecting legal materials in this study is by using observation techniques, interviews and literature review techniques (document studies) while the data analysis method is carried out using descriptive analytical methods. The results of the research concluded: 1) The role and responsibility of a Notary in resolving the problem of the loss of minutes of a deed due to negligence is in accordance with Article 16 paragraph (1) letter b of the Notary Law, namely making a deed in the form of minutes of a deed and storing it as part of the Notary Protocol. In resolving the loss of minutes of a deed, one of the ways is to compensate the parties, if the parties are harmed by the Notary concerned, while sanctions for Notaries who are negligent in storing the minutes of a deed they have made can be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal and dishonorable dismissal. 2) Legal implications for Notaries who due to their negligence result in the loss of minutes of a deed, namely they can be subject to sanctions, as stated in Article 9 paragraph (1) letter d of the UJUN, namely temporary dismissal from their position as Notaries for violating the obligations and prohibitions of their position. Notaries in carrying out their position must remember that the deed made by or before them is an Authentic Deed. The Authentic Deed is in the form of minutes of the deed which becomes a State Document/Archive and the agreement stated therein becomes law for those who make it. If the Notary in making*

the deed does not comply with the applicable laws and regulations, in this case it is not in accordance with the UUJN, then the Notary's actions can be qualified as an unlawful act. Unlawful Acts are regulated in Articles 1365 to 1380 of the Civil Code. Article 1365 states that every unlawful act that causes loss to another person causes the person who is wrong to issue the loss to compensate for the loss.

Keywords: Deed; Negligence; Responsibility.

1. Introduction

The Unitary State of the Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945) to guarantee certainty, order (benefit) and justice as legal protection in publishing their writings as a form of agreement and legal provisions that have the strongest and most complete evidentiary force. One article that has the most complete Notary agreement evidentiary force. A notarial deed is an authentic agreement because it is made in the form and determined by law, made by or before an authorized official generally for that in the place where the agreement is in it.

Notaries are needed in today's growing community. Because of the needs of the growing community life, legal certainty in the field of public services. One of the jobs that offers services in the field of civil law, especially Notary law. The role of a Notary, can be said to be a service seller who has an honorary position in society. Services can be said to be a process, or business that is generally based on an agreement between the two parties (namely the provider and recipient of the service) to achieve certain goals. Notaries in carrying out their duties are required to be professional, seen in their duties notaries must not benefit one party. In other words, a Notary must be neutral to the parties even though he is asked for legal assistance by one of the parties. A Notary is a public official who is authorized to make authentic deeds for all agreements and provisions required by general rules and/or by an interest stated in an authentic agreement, ensure the exact date, store the agreement and provide grosse (valid copy), copy and quotation and mutual agreement by one general rule that is given or excluded for officers or other people.¹

The Notary position is an institution created by the state. Placing a Notary as a position is a field of work or task that is deliberately made a legal rule for certain purposes and functions (certain authorities) and is continuous as a permanent work environment.² Notaries in carrying out their duties are guided by laws and

¹UU no. 2 of 2014 concerning the Position of Notary

²D Saputra, Se Wahyuningsih, 2017, The Principle of Caution for Notaries/PPAT in Carrying Out Their Duties and Functions in Efforts to Prevent Criminalization Based on the Code of Ethics, Jurnal Akta, p. 348.

regulations often referred to as the Notary Law (UUJN) Number 30 of 2004 amended by Law Number 2 of 2014. In the provisions of the Notary Regulation and the Notary Law (UUJN) basically states that the main task of a notary is to make the agreement authentic. Article 1870 of the Civil Code states that an authentic deed provides perfect evidence of what is contained therein. So, the importance of the Notary Position is the authority of the Notary granted by law to create perfect evidence or instruments and therefore authentic actions are basically assessed correctly.

Mistakes in notarial deeds made can result in the revocation of a person's rights or being pressured by someone from an obligation, therefore, a notary in carrying out his/her position must comply with the various provisions in the Notary Position Law.³ An agreement is said to be authentic if it is made before a competent authority. If the agreement is made before a Notary then the agreement is said to be a notarial agreement or authentic agreement or Notarial agreement.⁴

As a public official, a notary is not only involved in all actions and provisions of agreements that are required by law and statute in an authentic deed, but a notary also has an important role in creating legal certainty for the community.⁵ For that reason, the Notary must be legally and morally responsible because the agreement made will become a state archive and evidence for the parties who request legal assistance from the Notary. In addition, a notary in carrying out his work also receives an honorarium, but it does not rule out the possibility that the Notary is also less capable in terms of making a Notarial Agreement can be given easily. This is what distinguishes a Notary from other professions where a Notary is a profession that is fully responsible for the work he does.

This is in line with the principle of the State of Indonesia as a State of Law, namely providing clarity, order and legal protection that focuses on the main points, namely truth and justice. The Notary profession is a general or public position because in the Notary Law (UUJN), notaries are appointed and dismissed by the Minister. The philosophical basis of Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning Notaries, is a guideline for notaries in carrying out their duties and positions as public officials, UUJN is an absolute and mandatory regulation that must be obeyed and cannot be violated by notaries.

When carrying out his duties and authorities, a notary must act professionally based on a noble personality according to statutory regulations, while also having to comply with and uphold the code of ethics of the notary profession which must be observed as a guideline that must be obeyed. Article 16 paragraph (1) letter a, Law on the Position of Notaries, a notary must act honestly, independently,

³Abdul Ghofur Anshori, 2009, Indonesian Notary Institution, Legal and Ethical Perspective, UII Press, Yogyakarta, p. 46

⁴A. Kohar, 1983, Notary in Legal Practice, Alumni, Bandung, p. 64

⁵Sabintoro Prakoso, 2015, Ethics of the Legal Profession, Laksbang Justitia, Surabaya, p. 125.

carefully, impartially and responsibly.⁶ Being responsible for all legal acts carried out in the course of his duties and authority in making deeds is a requirement that must be carried out by a Notary as a public official.

Because the profession of a Notary is a public official, the deed made by the Notary in the form of an original deed (deed of minutes) is a state document and is authentic. In making a notarial deed of agreement, the notary needs to pay attention to matters in making the agreement, for that the Notary must use the principle of caution in making the Notarial deed of agreement. Notaries in making notarial deed of agreement can minimize future errors by paying attention to important matters in making notarial deed. Notaries must have extensive knowledge of agreements in order to be able to make a deed of agreement in any form.⁷ Authentic deeds can be used as written evidence, the strongest and fulfilled in trials and dispute resolutions that occur. And Notaries must be able to provide legal certainty for the community using Notary services.⁸

Kohar said that a written deed that was deliberately made is used as evidence. In Article 1 paragraph (7) UUJN, what is said to be a notarial deed or authentic deed is if a deed is made by and/or before a Notary in accordance with the procedures and forms determined by law and statutory regulations, namely made before an authorized official.⁹ The authenticity of a deed comes from Article 1 (1) UUJN, which states that a Notary is a public official, so his deed has the nature of an authentic deed. Because the law has stipulated that the deed must be made by or before an official who is authorized to make it.

Notary products in the form of authentic deeds are real actions that are subject to civil law provisions, especially the law of evidence. If the requirements as an authentic deed are in accordance with what has been required as a national administrative decision that is specific, personal, final, and the deed made before the Notary is not the will of the Notary, but the deed is made or formulated according to the wishes or will of the parties.¹⁰ If it turns out that in the future in carrying out his duties and authorities regarding each agreement and determination there is a problem/dispute, either the Notary's fault or the fault of the parties. If the error occurs due to the notary's fault either because the notary is negligent or because the notary intentionally does it, then the Notary must be able to take responsibility.¹¹

⁶Freddy Haris, 2017, Indonesian Notary, Lintas Cetak Djaja, Jakarta, p. 39.

⁷TY Hanapiah, Wahyuningsih, 2018, Things that Notaries Need to Pay Attention to When Making Notarial Agreement Deeds, Deed Journal, p. 116.

⁸H. Salim. Hs and H. Abdullah, 2007, Contract and MoU Design, Sinar Grafika, Jakarta, p. 102.

⁹A. Kohar, 1983, Notary in Legal Practice, Alumni, Bandung, p. 3.

¹⁰Habib Adjie, 2008, Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama, Bandung, p. 15.

¹¹Habib Adjie (A), 2008, Notary Law. In Indonesia, Interpretation of the Thematic of Law Number 30 of 2004 Concerning the Position of Notary, Bandung, p.24.

Another responsibility that a Notary has as the party authorized to make an authentic deed is to keep the minutes of the deed as referred to in Article 16 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). In letter b of Article 16 paragraph (1) it is stated that a Notary is required to make a Deed in the form of Minutes of the Deed and keep it as part of the Notary Protocol.

However, there is an exception to the obligation to keep the minutes of the deed, namely the obligation to keep the minutes of the deed does not apply if the Notary issues an original deed as explained in Article 16 paragraph (2) of the UUJN. Meanwhile, according to Article 16 paragraph (3) of the UUJN, an original deed includes:

1. Deed of payment of rent, interest and pension;
2. Deed of cash payment offer;
3. Protest deed against non-payment or non-receipt of securities;
4. Power of attorney;
5. Certificate of ownership;
6. Other deeds in accordance with the provisions of laws and regulations.

So basically, keeping the minutes of the deed is the obligation of the Notary, so the Notary should keep the Notary Protocol containing the minutes of the deed himself and not allow the Notary Protocol to be held by his employees, let alone lost. This is because the Notary Protocol is a collection of documents which are state archives that must be kept and maintained by the Notary as stated in Article 1 number 13 of the UUJN.

The implication of the Notary's obligation to keep the minutes of the deed, then if the minutes of the deed are lost due to his or her employee's carelessness, it can be said that the Notary did not carry out his or her obligation to keep the minutes of the deed properly. The Notary should be more careful and precise in keeping especially the minutes of the deed, because if the minutes of the deed that have not been found when the minutes of the deed are needed and it turns out that they have not been found, this can be detrimental to the client, so the Notary can be sued. For this, the party who suffers losses due to unlawful acts committed by the Notary, namely by not keeping the minutes of the deed from the deed he made, has not received legal protection. There are no provisions governing the solution to the losses suffered by the parties as a result of the minutes of the deed not being kept by the Notary where the Notary has died, then the parties will not be legally protected. This indicates that there is a legal vacuum in resolving cases like this.

Notaries who do not carry out their obligations as stated in Article 16 paragraph (11) letters a to l UUJN can be subject to sanctions ranging from written warnings to dishonorable dismissal. However, of course every violation of the law must follow the established procedural stages.

2. Research Methods

The research approach method used in this thesis is the normative legal research method. Sociological legal research emphasizes research by placing law as a building of a norm system. The norm system that studies the principles, norms, rules and regulations, court decisions, agreements and doctrines.¹²The specification of this research uses descriptive analysis, namely research that in addition to providing a description, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Data sources come from primary data and secondary data and tertiary data. Data collection methods include literature studies. The data analysis method used in analyzing data is a qualitative analysis of the interactive model as proposed by miles and Huberman.

3. Results and Discussion

3.1. How is the notary responsible for the loss of minutes of the deed due to his negligence?

Notaries in carrying out their duties, must act as guides in the legal field and can provide useful guidance for people who have an interest in them. Notaries are not subject to any provisions from the authorities regarding civil servants, however, in carrying out their duties, notaries must always be guided by high moral integrity and honesty, because deeds made by notaries are state documents that must be maintained and are very important in the application of evidentiary law, namely as authentic evidence concerning the interests of those seeking justice. A notary is usually considered an official where someone can get reliable advice. Everything that is written and determined is true. Notaries are strong document makers in a legal process.¹³

The definition of responsibility is a state of being obliged to bear everything if something happens then someone can be sued, blamed, prosecuted. As much as possible, the notary must try to find out that the identity and information of the parties are true. The notary can obtain such information from people he knows and trusts or can see proof of the identity of the parties, but if it turns out that all the information provided by the parties is not true, then all of that is not the responsibility of the notary because the notary is only responsible for the formal truth that has been given by the parties.¹⁴

¹²Mukti Fajar and Yulianto Achmad, 2020, Dualism of Normative and Empirical Legal Research, 1st Edition, Pustaka Pelajar, Yogyakarta, p. 153.

¹³Tan Thong Kie, 2001, All About Notary Practice, Ichtiar Baru, Jakarta, p.30

¹⁴Muhammad Ali, Op. Cit., P.139

The ethical responsibility of a notary is related to moral norms which are the measure for a notary to determine the right and wrong or good and bad actions taken in carrying out his profession. This responsibility includes 3 (three) things, namely:¹⁵

1. If the action is carried out in a state where the mental capacity is functioning normally.
2. In the event that the notary commits a violation of his/her own free will.
3. There was deliberate malicious intent carried out by the notary and as a result it caused losses.

In essence, morals are closely related to ethics, which have 2 (two) meanings. First, as a collection of assessments of human actions. Second, it is ethical in nature which is used for human actions regarding ethical values and norms that are moral and must be supported by high moral integrity. This is stated in the notary's job regulations.

One of the obligations of a Notary that must always be carried out as stated in Article 16 paragraph (1) letter b is that the notary must make a deed in the form of a deed minute and store it as a notary protocol. The deed minute is a state archive that will be needed at some point if there is a case in the future. Although the deeds made by the notary are varied and even numerous, the deed minute must be stored. The deed minute or minute is the original deed signed by the person appearing, witnesses and notary and stored in the notary's archive (not a copy or extract and also not grosse)". All deed minutes, repertorium and klapper must be stored by the notary because they are all important documents that must be archived and stored by the notary.¹⁶

Minutes of a deed are one of the state archives and can also be said to be the life of a notary, in the minutes contain the will of the parties or the parties and at the end of the deed are the signatures of the parties, witnesses and the Notary. Before the deed is signed, the Notary must read the contents of the deed so that it is understood by the parties. Even if it is not read, the parties must initial each deed. If the Notary does not keep the minutes of our deeds or even does not make minutes of the deed, how is the legal certainty of the copy of the deed he made.

Before a copy is issued, the minutes of the deed are made first, complete with the initials and signatures of all parties, witnesses and the notary. In making a copy of the deed, the minutes of the deed must be guided by the minutes of the deed. A copy of the deed is made after the minutes of the deed are made by the Notary. What is meant by a copy of the deed as stated in Article 1 is a word-for-word copy

¹⁵Sarihartati, 2018, The Role of Notaries in Providing Legal Protection for Purchasers of Uncertified Plots of Land, Journal of the University of North Sumatra, Medan, P.90

¹⁶Budiono, Herlien. 2013, Basic Techniques for Making Notarial Deeds, Citra Adiyta Bakti, Bandung, p.81

of the entire deed and at the bottom of the copy of the deed is the phrase "given as a copy of the same text". In the copy of the deed, there is a statement from the Notary starting from the beginning of the deed and the end of the deed. The beginning of the deed explains that the parties have appeared before the Notary and at the end of the deed there is a statement regarding the minutes of the deed that have been signed perfectly and as a copy of the same text. The meaning of the same text is that the copy of the deed has exactly the same content as the minutes of the deed. Notaries should be more careful and precise in storing especially minutes of deeds, so that minutes of deeds that have not been found and due to the carelessness of their employees can be more vigilant and careful in storing them and the most severe damages can be determined because of the actions of their employees who are not neat in storing the minutes. One example is when the minutes are to be proven, it turns out that they have not been found and can harm the client if something unwanted happens.¹⁷

3.2. How are sanctions applied for the loss of minutes of deed due to negligence?

The Notary Position Regulation above has been amended by Article 1 Paragraph 1 of Law Number 02 of 2014 concerning the Notary Position which states that a Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this Law or based on other Laws. A Notary as a public official (*openbaar ambtenaar*) is authorized to make authentic deeds, in connection with his authority, a notary can be burdened with legal responsibility for his actions in making authentic deeds that are not in accordance with applicable provisions or are carried out unlawfully.

Accountability is an attitude or action to bear all the consequences of an act committed or an attitude to bear all risks or consequences arising from an act. Accountability is determined by the nature of the violation and the legal consequences it causes. In general, the responsibilities that are usually imposed on notaries are administrative, civil, and criminal responsibilities. Administrative responsibilities are subject to administrative sanctions, civil responsibilities are subject to civil sanctions and criminal responsibilities are subject to criminal sanctions, where this is a consequence of the violation or negligence committed by the notary in the process of making an authentic deed.

Determining the existence of civil or criminal liability carried out by a notary must meet three conditions, namely there must be a notarial act that can be punished, the elements of which are expressly formulated by law. The notarial act is contrary to the law, and there must be an error from the notary. Errors or negligence in the criminal sense include elements contrary to the law and there must be an unlawful act. So basically every form of violation or negligence carried out by a notary always contains an unlawful nature in this act.

¹⁷ Ibid

The responsibility of a notary in the UUJN is contained 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 notary protocol has been submitted or transferred to the party keeping the notary protocol. Looking at the formulation of the article, it is known that notaries must still be responsible for every deed they make even though the notary protocol has been submitted or transferred to the party keeping the notary protocol.

Notaries in carrying out their duties must remember that the deeds made by or before them are Authentic Deeds. Authentic Deeds are in the form of minutes of the deed which become State Documents/Archives and the agreements stated therein become laws for those who make them, thus in accordance with Article 1337 BW and 1338 BW Notaries are also public officials who have authority with exceptions. Public here means law not general. Notaries are also public officials who are given some authority by the State to make written and authentic evidence in matters of civil law. Notaries are not structural positions in government but their authority is specifically inherent in their position. The authority of a Notary is obtained by attribution because Notaries are appointed based on the Notary Position Law. Although Notaries are appointed by the State, Notaries are not civil servants who receive salaries from the State, Notaries receive honorariums from people who use their services.

The Notary has an obligation to make a deed at the request or desire of the parties, so in this case it provides a basis for the Notary and the parties to have a legal relationship. Therefore, the Notary must guarantee that the deed made is in accordance with the specified legal regulations, so that the interests of the parties concerned are protected by the deed. If the Notary in making the deed does not comply with the applicable laws and regulations, in this case it is not in accordance with the UUJN, then the Notary's actions can be qualified as an unlawful act. Unlawful Acts are regulated in Articles 1365 to 1380 of the Civil Code. Article 1365 states that every unlawful act that causes loss to another person causes the person who is wrong to issue the loss to replace the loss.

Unlawful acts as described above have an impact on the emergence of legal consequences. Legal consequences are the consequences given by law for an action of a legal subject. In this regard, Notary. In the event that the Notary does not keep the minutes of the deed at that time after a copy of the deed is issued, then this is in conflict with the provisions of the Article above. The Notary is considered to have made a mistake by not complying with his obligations as stated in Article 16 paragraph (1) letter b above. Mistake is a translation of the word "schuld", which in a broad sense includes intent (opzet) and negligence (onachtzaamheid). Intention is the occurrence of the loss that is indeed desired or even though the loss that is caused is not desired but the action is desired, while

negligence is an event where someone should have known or should have suspected that his actions could cause loss.¹⁸

In legal science, an error is considered to exist if one of the following 3 (three) conditions is met:

1. There is an element of intent
2. There is an element of negligence (negligence, culpa)
3. There is no justification or excuse (rechtvaardigingsgrond), such as force majeure, self-defense, insanity, etc.

From the explanation above, the element of intent occurs because of the perpetrator's intention to do something that can result in Ahmad Ali classifying legal consequences into 3 types, namely as follows:

1. Legal consequences include the birth, change or disappearance of a particular legal rule.
2. Legal consequences include the birth, change or disappearance of a particular legal relationship.
3. Legal consequences in the form of sanctions, both criminal sanctions and sanctions in the field of civil law.

Meanwhile, in the field of civil law, sanctions are known for both unlawful acts and breach of contract. In unlawful acts, the sanction is the provision of compensation based on Article 1365 of the Civil Code.

In UUJN Article 16 paragraph (1) letter b which regulates the obligation of Notaries to make deeds in the form of minutes of deeds and store them as part of the Notary Protocol. Based on the above, Notaries who do not comply with or do not carry out their obligations in accordance with the provisions of UUJN, in this case Notaries who cannot make and store their minutes of deeds as part of the Notary Protocol, as stated in Article 16 paragraph (1) letter b UUJN, can be categorized as an unlawful act.

In Article 16 paragraph (1) letter b, Notaries are required to make a deed in the form of Minutes of Deed and keep it as part of the protocol for the occurrence of losses for other parties (victims). While in the element of negligence, the perpetrator in doing something that causes losses for the victim is done without being preceded by any intention. The loss of minutes of deed is caused by several factors, one of which is the busyness of the Notary concerned, so that a minute of deed is not stored at that time. If reviewed based on the reasons as referred to above, then according to the author basically the Notary has no intention of not

¹⁸Interview with Mr. Farchan Ali Imron, SH., MK.n as the chairman of the Purwodadi Notary Regional Supervisory Board, October 21, 2024

storing the minutes of deed immediately after issuing a copy of the minutes of deed, but because of the busyness of the Notary who may have to receive several clients at the same time, so that the storage of the minutes of deed does not know that it has actually been stored through one of his employees who has been given the responsibility to store it in a place that has been provided in the cabinet and which should be done at that time and should not delay a job so that the minutes of the deed are lost even though there is no element to remove it.

Administrative sanctions given to notaries who violate include:

- a. Verbal reprimand;
- b. Written warning;
- c. Temporary suspension;
- d. Honorable discharge;
- e. Dishonorable discharge.

This sanction is applied in stages starting from verbal warnings to dishonorable dismissal. Determination of sanctions against Notaries must see the severity of the violation committed by the Notary.

4. Conclusion

The Role and Responsibility of Notaries in Resolving the Problem of Loss of Minutes of Deeds Due to Negligence is in accordance with Article 16 paragraph (1) letter b of the Notary Law, namely making a deed in the form of minutes of the deed and storing it as part of the Notary Protocol. Minutes of the deed are the original deed containing the signatures of the parties or the parties appearing, witnesses and the Notary. The minutes of the deed are also given a number, date, month and year which function to guarantee certainty that the parties or the parties appearing have appeared on the date, month, year and time. One of the responsibilities of a Notary in resolving the loss of minutes of the deed is to compensate the parties, if the parties are harmed by the Notary concerned.

5. References

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