

Responsibilities of Notaries as a Public Official in Making Authentic Deeds

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Abstrak

Notaries are given the authority to make general deeds, while PPAT (Land Deed Maker Official) is a general official who handles special deeds in the land sector. The deeds made by the two Notary and PPAT officials are authentic evidence which essentially contain formal truths that can be used by anyone in the future that a legal act as stated in the deeds has occurred. So that Notary and PPAT officials have a very important role in building certainty order and legal protection in society. Therefore, the problem is the extent of a Notary's responsibility as a public official for the deed he makes and what sanctions can be given to the Notary if he violates the implementation provisions in making authentic deeds. To answer this problem, the method used is empirical juridical, namely research based on field research and equipped with library research. An authentic deed is perfect evidence which aims to guarantee certainty and legal protection to the parties. A notary must carry out his responsibilities properly in accordance with professional ethics (code of ethics) and in accordance with the Law on the Position of Notaries. This responsibility is not only based on morals but also based on law, especially Law Number 30 of 2004 concerning the Position of Notary Public in conjunction with Law Number 02 of 2014 concerning the Position of Notary Public.

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1. INTRODUCTION

Based on Article 1 paragraph (3) of the 1945 Constitution, the rule of law aims to guarantee legal certainty, order and protection based on truth and justice. Certainty, order and protection require, among other things, that authentic written evidence is required in community life.

A deed is a letter of evidence that functions as strong written evidence. In this day and age, written evidence in the form of a deed is very important. Considering the function of a deed as a written document, it can provide proof of a legal event. All aspects of life that are related to a legal act that can prove the existence of a right or obligation can be made into a deed so that its use will become wider because it contains benefits for proof.

In Article 1 point 1 of Law Number 30 of 2004 concerning the Position of Notaries junco Law Number 02 of 2014 concerning the Position of Notaries, states that "A Notary is a public official who has the authority to make authentic deeds and other authorities as intended in this Law". Every society that carries out legal actions needs a person (figure) whose information is reliable, can be trusted, and whose signature and seal (stamp) provide guarantees and strong evidence, an impartial expert and an advisor who has no defects (onkreukbaar or unimpeachable). , who kept his mouth shut, and made an agreement that could protect him in the days to come.

A Notary is a Public Official, this does not mean that the Notary is a Civil Servant but rather an official as intended in Article 1868 of the Civil Code (Borgerlijk wetboek) which has a general meaning, namely that "a deed in the form according to the provisions of the

Law is made by or in the presence of a public employee authorized to do so at the place where the deed was made.”

Public officials who are given the authority to make authentic deeds as described in Article 1868 of the Civil Code apart from a Notary include Judges, Bailiffs at courts and Civil Registry Employees. The location of the special evidentiary power according to authentic deeds is explained in Article 1870 of the Civil Code that "an authentic deed provides between the parties and their heirs or people who have rights from them a perfect proof of what is contained therein".

Based on the brief description above, the problem raised for further analysis in this paper is the extent of the notary's responsibility as a public official for the deed he or she makes, and what sanctions are given to the Notary if they violate the implementation provisions in making an authentic deed?

When carrying out his profession in the community, a Notary must be prepared to comply with the laws and regulations governing the Notary's position and must not be influenced by other factors that could damage the performance of a Public Official and is prohibited from discriminating between visitors or clients who come to his office to obtain legal services in the field of Notary Affairs, whether from businessmen, civil servants, farmers or people who are classified as underprivileged.

The purpose of writing this article is to find out the extent of the Notary's responsibility as a Public Official for the Deed he or she makes, and to find out what sanctions are given to the Notary if they violate the implementation provisions in making an authentic deed.

2. RESEARCH METHOD.

The type of research used in making this article is empirical juridical, namely research based on field research and complemented by library research.

3. RESULTS AND DISCUSSION

3.1. Responsibilities of the Notary as a public official regarding the deeds he makes.

Based on the explanation of Article 1 UUJN, the main task and authority of a Notary is to make an Authentic Deed. An authentic deed made by a Notary has strong and perfect proof. A notary is not only identified with an authentic deed, but there are several other legal services that can be provided to people who need them, one of which is providing legal services in terms of making Deeds of Lottery Minutes, as well as providing legal services in the field of notarial services that are needed by the public lay people who need to make agreements.

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. The scope of a Notary's responsibility includes the concrete truth of the deed he or she makes.

Legal services in the notarial field must continue to refer to and comply with:

1. Notary Public Position Law;
2. Notary Code of Ethics.

With the aim of carrying out the notary profession in the community

Does not reduce the dignity and nobility of the Notary profession. The provision of legal services by Notaries to the public must be carried out fairly and transparently without having to take sides with one party.

In the current era of globalization, notary services are very necessary for every person and legal entity, the need for an authentic deed for a legal act carried out by the parties can be used as perfect evidence and the notary must also be responsible for the authentic deed he or she makes.

One of the results of an interview from a Notary revealed that the Notary must be fully responsible for the deed he makes, where the notary's responsibility is only limited to the deed he makes, the deed is an agreement between the parties and the problem so far has only been limited to procedures, there is nothing regarding the contents of the Notary. the deed, while the role of the Regional Supervisory Council is as a filter as to whether a notary can be approved, summoned or not by the police for questioning.

Apart from that, some also stated that the notary's criminal responsibility for the deed he made is imposed if the notary commits a criminal act, the notary can be given sanctions in the form of a verbal warning to dishonorable discharge if the deed he made does not have authentic power. Sometimes when making a deed, the client does not sign in front of a notary, often the deed is not read because of the close kinship relationship with the client, or because certain positions held by the client are sometimes treated with special privileges.

The making of a Notarial deed, whether it is a joint deed or a deed of the parties, is the main basis for making an authentic deed, namely that it must be the wish of the parties, if the wish or will of the parties does not exist then the Notary cannot make the deed in question.

According to Article 16 paragraph 1 UUJN, the form of a deed can be divided into an authentic deed and a private deed. Notarial Deeds are classified as authentic deeds, as regulated in Article 1868 of the Civil Code, that an authentic deed is a deed made in the form determined by law by or before the Public Official at the place where the deed was made. Therefore, the position of a notarial deed is an authentic deed, where the minutes of the deed must be kept by the Notary as a state document.

Sudikno Mortokusumo (2002: 153) states that a notarial deed as an authentic deed has physical, formal and material evidentiary power, and has perfect evidentiary power. Based on the strength of the evidence regarding the proof of an authentic deed, namely a deed that appears to be an authentic deed and has the specified conditions, the deed is considered to be an authentic deed. Likewise, regarding the material responsibility of a notary for the authentic deed he makes, it is necessary to emphasize 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 requesting the deed to be made.

Thus, a notarial deed is actually a deed of the interested parties, not a deed of the parties concerned. That's why, in the event of a dispute arising from an agreement in a notarial deed made for them and the Notary is confronted, they are the ones who are bound by the agreement itself, while the notary is not bound to fulfill any promises or obligations as stated in the notarial deed made before him and the Notary is completely outside of those who are parties.

The basic demand in human life and especially in carrying out all professions is that humans always act responsibly, where the notary must be responsible in 2 (two) directions, namely:

1. Notaries as a profession are expected to be responsible for the work they do and the results. So, it is hoped that the Notary can work as well as possible and produce something of good quality. In other words, carrying out a profession contains demands for maximum results. Quality has several aspects; the notary must ensure that the Notary masters his duties as well as possible so that the Notary is competent. Notaries must continuously improve their mastery of their profession. The way you work must be effective and efficient. The results of the work must be at least as expected by the client, but efforts must be made to be even better.
2. Notaries must be responsible for the impact of their work on the lives of others. What needs to be considered here is the impact of professional practice on the

interests of clients and the interests of the state. If the exercise of a profession violates a right, the true profession will terminate its work.

Based on research and interviews conducted by the author with several Notaries, it can be concluded that the responsibility of Notaries as public officials for the authentic deeds they make is absolute and they can be held accountable as long as they are still authorized to carry out their duties as notaries. With such a construction of responsibility, no notary will be asked to take responsibility after the person concerned stops serving as a notary, or until the notary retires.

This kind of responsibility is in accordance with the spirit of Article 1870 of the Civil Code, which reads:

"An authentic deed provides, between the parties and their heirs or people who have rights from them, perfect proof of what is contained therein"

So a notarial deed is an authentic deed that will prove itself as valid evidence according to law. Because an authentic deed as an authentic deed must be seen and assessed for what it is so that if there is a party(s) who accuse or judge that the deed is fake or not true, then the party who accuses or judges must be able to prove their own accusation and assessment in accordance with the legal process. (civil lawsuit) not by complaining to a notary (or PPAT) to the police.

3.2. Sanctions that can be given if a notary violates the implementation provisions in making an authentic deed.

Upholding professional ethics, creating idealism in practicing the profession, namely working not for profit, serving others. So the relationship between ethics and morals is that ethics is a critical reflection on issues of morality and helps and seeks orientation towards existing norms and values.

The existence of a notary in the community is very important, especially in the binding process. In this binding process, sometimes there are naughty notaries who violate the provisions in making the parties' deeds, for example because of their very close relationship with the parties, the notary will deliberately easily help in carrying out the binding, even though we know that a notary should act carefully and impartial and detrimental to one of the parties in the process of making the deed, if something like this happens then the notary can be subject to sanctions for the violation he committed.

The inclusion of sanctions in these regulations is an obligation that must be included in every legal regulation. It is as if the legal rules in the law cannot be enforced or cannot be obeyed if the final part does not include witnesses.

The witness presented to the notary was an awareness that the notary, in carrying out his official duties, had violated the provisions regarding the duties of a notary as stated in the UUJN.

Apart from that, by imposing sanctions on notaries, it can protect the public from notarial actions that could be detrimental to society, for example making deeds that do not protect the rights of those concerned as stated in the notarial deed. These sanctions are also to maintain the dignity of the notary institution as a trusted institution, because if a notary commits a violation, it can reduce public trust in notaries.

Sanctions are a tool of power that can be given to a notary if he violates the provisions regulated in the UUJN, then the notary can be subject to sanctions in the form of administrative sanctions in the form of verbal warnings and written warnings, temporary dismissal, honorable dismissal and dishonorable dismissal.

A notary can be subject to civil sanctions if the notary is proven to have violated certain articles, for example those contained in Article 84 UUJN, namely:

1. If a notarial deed has the power of proof as a private deed;
2. If the notarial deed is null and void by law.

The consequences of such a notarial deed can be a reason for the parties to demand reimbursement of costs, compensation and interest from the notary.

Sanctions against notaries show that notaries are not legal subjects who are immune from the law. Apart from civil sanctions and administrative sanctions, a notary can also be subject to ethical sanctions. Ethical sanctions can be imposed on a notary, because the notary violates the notary's code of ethics. This sanction was imposed by the Notary Honorary Council, that the highest sanction from the Notary Honorary Council is in the form of dishonorable or honorable dismissal from membership in the notary office organization.

A notary can also be subject to criminal sanctions, if the notary can be proven to be correct if the notary deliberately makes a fake document or falsifies a deed, namely making a fake document or falsifying the document or making it appear as if the letter is a genuine document and not forged, committing forgery or counterfeiting. This has been done in authentic deeds, including a false statement in the authentic deed.

Adding that placing a notary in the position of a convicted person shows that there are parties who do not understand what and how, and the position of a notary in the national legal system. Placing notaries as convicts (before being convicted, suspects and defendants) or criminalizing notaries shows that other parties outside notaries such as the police, prosecutors, and courts or other legal practitioners show a lack of understanding of notaries.

From the research carried out, in general, answers are not much different regarding the sanctions given to Notaries if they violate the provisions in the implementation of making authentic deeds, where a notary as a public official must act based on the Code of Ethics and UUJN in making authentic deeds.

Notary is a profession that is based on special skills that are pursued through special education and training. This is according to the notary to have extensive knowledge and be responsible for serving the public interest. When a notary carries out his duties, the notary must uphold and uphold the dignity of his profession as a position of trust and respect.

In serving the public interest, notaries are faced with various human characters and desires that differ from each other from each party who comes to the notary to make an authentic deed or simply legalize it as confirmation or written proof of an agreement they have made. Notaries are charged with great responsibility for every action carried out in relation to their work, in this case relating to making authentic deeds.

In the provisions of Article 15 paragraphs (1) and (2) UUJN, it can be said that the main authority of a Notary is to make authentic deeds. Apart from having the authority to make authentic deeds, a notary also has the authority to certify a deed made by the parties appearing as proof of the existence of a legal relationship.

A deed made in front of or by a notary has the status of being evidence, thus the notary must have good intellectual capital in carrying out the duties of his position. Examination of notaries is inadequate if carried out by those who have not studied the world of notaries. This means that those who will examine the notary must be able to intellectually prove major mistakes made by the notary. In this case, the logical (legal) power required to examine a notary is not the logical power (meaning power) required to examine a notary.

4. CONCLUSION

The responsibility of the Notary as a Public Official in making authentic deeds regarding the deeds he makes is still not optimal because there are still notaries who sometimes in making deeds still pay little attention to close kinship relationships with clients, or because certain positions held by clients are sometimes treated with special.

Role Notaries in their service to the public in accordance with the morals of professional ethics and the law are consolidating acts in private law in the form of authentic deeds as perfect evidence with the aim of providing legal certainty as well as legal protection to the parties involved.

The responsibility of a Notary in providing services to the public in accordance with professional ethics and law is to carry out and uphold the provisions of the Notary Code of Ethics and the Law on Notary Positions as well as other statutory regulations.

And the sanctions that can be given to a notary if they violate the provisions for implementing authentic deeds are civil sanctions, criminal sanctions, administrative sanctions and code of ethics sanctions.

5. BIBLIOGRAPHY

Abdul ghofur, 2009, *lembaga kenotariatan Indonesia, persfektif hukum dan etika*, Penerbit UII Press Yogyakarta.

Adsence camp, 2009, *komunitas dan perpustakaan online Indonesia*.

Cipta Soenaryo, [https://mkn.usu.ac.id/Peran Dan Tanggung Jawab Notaris dalam Pelayanan kepada Publik Sesuai dengan Moral Etika Profesi dan Undang-Undang](https://mkn.usu.ac.id/Peran%20Dan%20Tanggung%20Jawab%20Notaris%20dalam%20Pelayanan%20kepada%20Publik%20Sesuai%20dengan%20Moral%20Etika%20Profesi%20dan%20Undang-Undang).

Habib Ajdie, 2008, *sanksi perdata dan administrative terhadap Notaris sebagai Pejabat Publik*, Penerbit PT.Refika Aditama Bandung

Habib Aje, 2008, *Hukum Notaris Indonesia tafsir tematik terhadap UU Nomor 30 tahun 2004 tentang Jabatan Notaris*, Penerbit PT.Reflika Aditama Bandung.

Habib Aje, 2009, *meneropong khazanah Notaris dan PPAT Indonesia (Kumpulan Tulisan Notaris dan PPAT)*, Penerbit. PT.Citra Aditya Bandung.

Irma Devita Purnamasari, *perbedaan akta otentik dan akta dibawah tangan*, www.google.com.

Liliana Tedjosaputro, 2009, *Tanggung Jawab Jabaran Notaris*, www.Adln.Lib.Unair.ac.id

Nico, 2003, *Tanggung Jawab Notaris Selaku Pejabat Umum*, Yogyakarta Center for documentation and studies of bisnis law

Soetandyo Wignjosoebroto (Pengurus Ikatan Pusat Notaris Indonesia), 2008, *Jati Diri Notaris Indonesia*, PT.Gramedia Jakarta.

Legislation

Undang-Undang Dasar 1945

Kitab Undang-Undang Hukum Perdata

Peraturan Jabatan Notaris (stb 1860:3) Lembaran Negara tahun 1954 No.101

Undang-Undang Nomor 30 tahun 2004 tentang Jabatan Notaris, disahkan dan diundangkan pada tanggal 06 ktober 2004 dalam Lembaran Negara Rapublik Indonesia Tahun 2004 Nomor 117.

Salinan Undang-Undang Republik Indonesia Nomor 2 tahun 2014 tentang perubahan atas Undang-Undang Nomor 30 tahun 2004 tentang Jabatan Notaris, disahkan dan diundangkan di Jakarta pada tanggal 15 januari 2014 dalam Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3

Kode Etik Ikatan Notaris