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Legal Liability of Notaries for Misuse of Certificate Custody by Third Parties: Case Analysis of Albert Riwukore

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Abstract
A notary, as a public official, holds legal responsibility for any document or item entrusted to them in the scope of their professional duties. This paper examines the legal liability of Notary Albert Riwukore regarding the loss of nine land ownership certificates (SHM) that were initially deposited during the credit collateral process between Rachmat (debtor) and BPR Christa Jaya Perdana (creditor). Although the SHMs were retrieved by Rachmat—its legal owner—for photocopying purposes, the retrieval lacked written consent and official documentation from the notary's office. This raised legal concerns under both civil law (tort and breach of contract) and criminal law (alleged embezzlement). The analysis reveals that the notary's responsibility must be distinguished between administrative negligence and criminal intent. No evidence supports the presence of dolus (malicious intent), although culpa (negligence) may still be applicable. Moreover, Rachmat's voluntary action as the rightful owner to retrieve the certificates eliminates a key element of embezzlement. This study underlines the importance of meticulous documentation systems and precautionary procedures in the notarial profession to avoid potential criminalization of their official duties.

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1. INTRODUCTION

Notaries as public officials appointed by the state have a central role in providing legal certainty for deeds they make and documents entrusted to them. In practice, notaries are often trusted as parties who store and secure important documents such as land title certificates. This trust is based on the principles of prudence, professional integrity, and accompanying legal guarantees as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. However, the reality in the field shows that there are deviations and violations that result in losses for parties who use notary services, one of which is the misuse of document storage by third parties without adequate supervision from the notary. One case that has attracted public attention is the Albert Riwu Kore case, which raises legal issues regarding the extent to which notaries can be held legally responsible for losses arising from the misuse of land certificates entrusted through intermediaries or third parties.

In the context of civil law, the legal relationship between the depositor and the notary can be qualified as a relationship of deposit or custody agreement (*custody*) as regulated in Article 1694 of the Civil Code (KUH Perdata). The deposit creates a legal obligation for the notary to maintain, secure, and return the document to the authorized party. If there is

misuse by a third party, the question arises whether the notary can still be held responsible, especially if the notary knows or should have known of the potential for such deviation. This becomes complex when a third party acts on behalf of or carries a document without a power of attorney or without a valid administrative procedure. In this case, the professionalism and caution of the notary become very crucial because they are directly related to the legal and material losses that can be suffered by the owner of the document.

The Albert Riwu Kore case is a concrete example of the gap in supervision and implementation of the principle of prudence in notarial practice. In this case, a land title certificate entrusted through a notary to a third party was misused for purposes other than the owner's consent, resulting in a civil lawsuit and potential criminal action. Although there was no direct unlawful act by the notary, there are ethical and legal issues related to negligence in ensuring that documents were submitted only to authorized parties and based on correct legal procedures. This is important considering that notaries as public officials are not only responsible to clients, but also to the law and the wider community for their actions and negligence.

Normatively, the provisions in the Notary Law (UUJN) emphasize that notaries are required to act in a trustworthy manner, impartially, and maintain the confidentiality of all matters relating to deeds or documents under their authority. Article 16 paragraph (1) letter a of the UUJN requires notaries to act honestly, carefully, independently, impartially, and to safeguard the interests of the interested parties in every legal act. Furthermore, Article 16 paragraph (1) letter c stipulates that notaries are required to store notary protocols and other documents in an orderly and secure manner. Therefore, if a notary is negligent in carrying out these obligations, including in terms of supervision of documents on deposit, then legal responsibility can be imposed on him, both civilly (due to default or unlawful acts), and ethically through the Notary Honorary Council.

In addition, under criminal law, if there is an element of gross negligence or participation in a criminal act such as embezzlement or forgery, it is possible that the notary can be held criminally liable. This is in accordance with the principle that a person who, due to his negligence, causes harm to another person can still be held criminally liable as regulated in Articles 359 and 360 of the Criminal Code. In practice, the burden of proof of malicious intent (*mens rea*) or gross negligence becomes crucial in determining the notary's liability. However, even if not proven criminally, the notary can still be held civilly responsible for his negligence in supervising the custody of documents.

Furthermore, the case of Albert Riwu Kore also shows the importance of reform in the supervision of document deposit practices by notaries. The absence of standard operating procedures in the process of depositing and retrieving documents creates legal loopholes that can be exploited by irresponsible parties. Therefore, a stricter internal and external control mechanism is needed, both through regulation and supervision by professional organizations such as the Indonesian Notary Association and the Ministry of Law and Human Rights as the supervising agency. In addition, notaries are also required to always improve their ethical and legal competence in order to avoid violations that can harm the community and tarnish the dignity of the profession. The problem of notary legal liability for misuse of document deposit does not only concern civil and criminal law aspects, but also concerns the ethical and moral responsibilities inherent in the notary profession. Through the case study of Albert Riwu Kore, this paper aims to examine in depth how notary accountability should be enforced in dealing with certificate deposit practices that lead to misuse by third parties. This research is expected to contribute to the development of a legal framework and governance of the notary profession that is more accountable and has integrity.

2. RESEARCH METHOD

In this paper, the author uses a normative legal research method. This study uses a normative legal research method, namely a method that relies on literature studies by examining secondary data in the form of laws and regulations, doctrines, legal principles, and court decisions that are relevant to the main problem. Normative legal research aims to examine the applicable positive legal norms, in this case related to the legal responsibility of notaries for misuse of certificate deposits by third parties, as regulated in Law Number 2 of 2014 concerning the Position of Notaries, the Civil Code, the Criminal Code, and other related provisions. Data collection techniques are carried out through legal document and literature studies, including a study of the Albert Riwu Kore case which is the focus of the analysis. All data are analyzed qualitatively, namely by describing and interpreting relevant legal rules to obtain answers to the legal problems studied. This approach was chosen because it is appropriate for exploring the normative concept of notary legal responsibility and legal limitations in document deposit practices. Thus, this method is expected to provide comprehensive and systematic legal arguments in answering the legal issues raised.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Legal Responsibility of Notaries for the Loss of Certificates Deposited Within the Scope of Their Job Duties

The notary profession is a public official who has the authority to make authentic deeds and the obligation to guard, store, and maintain the confidentiality of documents or objects entrusted to him. The authority and responsibility of a notary are strictly regulated in *Law Number 30 of 2004 concerning the Position of Notary* as amended by *Law Number 2 of 2014*(UUJN). Article 16 paragraph (1) letter a UUJN states that in carrying out his/her position, a notary must act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal acts. When nine areas of Certificate of Ownership (SHM) were lost by a third party in the control of the Albert Riwukore notary office, the issue arose regarding the extent of the notary's legal responsibility for the loss of objects entrusted in his/her capacity. In this case, the SHM which was initially used as collateral for credit by Rachmat to BPR Christa Jaya Perdana, was then processed by staff from the Albert notary office. After being divided into 18 SHMs, 15 SHMs were entrusted back to the notary's office and it was later discovered that nine of them were taken back by Rachmat on the grounds of being photocopied. This retrieval became the point of the problem because the SHMs were not returned to the BPR which claimed to still have rights to them because Rachmat's debt had not been legally paid off. The BPR's legal representative even emphasized that the payment claimed by Rachmat was invalid because it was made to a personal account, not the official BPR account.

Legally, the notary's responsibility for objects entrusted to him can be reviewed through the principle of *custody*, namely the obligation of custody by the party entrusted with the goods. Based on Article 1313 of the Civil Code, the custody of goods is an agreement in which a person receives goods from another person with the obligation to store them and return them in their original condition. In this case, although there was no written custody agreement between BPR and Notary Albert, the practice of entrusting certificates to a notary is an inseparable part of the notary's duties in carrying out deeds, such as the Deed of Granting Mortgage Rights (APHT). The notary's responsibility becomes even heavier because the notary's position as a public official means that any action or negligence can have serious legal consequences. Moreover, based on Article 16 paragraph (1) letter c of the UUJN, notaries are required to keep the minutes of the deed and other documents related to the deed they make. Supporting

documents or certificates entrusted for the purpose of making a deed or supplementing a deed are also included in the notary's security obligations. Therefore, when nine SHMs were lost in the possession of the notary's office, in principle the notary must still be responsible for the incident.

However, the case of Notary Albert becomes complex because the document was taken directly by the legal owner of the certificate, namely Rachmat. On the one hand, the notary staff has permitted the retrieval on the grounds of photocopying, but on the other hand there is no supervision mechanism or documentation of the retrieval that reflects the principle of caution that should be upheld in the notary profession. This is where the possibility of administrative negligence lies which can be qualified as a form of blame (omission), no *trick*(intentional), as formulated in the doctrine of civil and criminal liability. The BPR party considered the loss of the document to be an unlawful act (PMH) and/or embezzlement, so it took two legal channels at once: a civil lawsuit with case No. 184/Pdt.G/2018/PN Kpg and No. 186/Pdt.G/2018/PN Kpg, as well as a criminal report which ultimately resulted in the suspect status of notary Albert. In civil law, to prove PMH according to Article 1365 of the Civil Code four elements are required, namely: the existence of an act, the act is unlawful, the existence of a loss, and a causal relationship between the act and the loss. The BPR civil lawsuit was rejected because the judge considered that the formal and material requirements of the PMH element were not met, including insufficient evidence that Albert was directly responsible for the loss of the certificate.

In the criminal aspect, the alleged embezzlement of notary Albert refers to Article 372 of the Criminal Code, which states that anyone who intentionally and unlawfully owns something that is wholly or partly owned by another person, which is in his control not because of a crime, can be punished for embezzlement. In this case, the biggest obstacle to proof is the position that the document was taken by the legal owner, and no element of malicious intent was found (*mens rea*) from Albert himself in using or controlling the certificate unlawfully. This was proven in the investigation process which was stopped through SP3 by the NTT Regional Police, but was later canceled by the pretrial decision No. 2/Pid.Pra/2022/PN Kpg. The cancellation of the SP3 reopened the investigation and re-designated Albert as a suspect. Notary Albert also filed a pretrial motion as a form of resistance, but was again rejected. This process shows how the Indonesian legal mechanism opens up dual space for resolving professional disputes: both through civil and criminal matters.

In terms of professional protection, the Indonesian Notary Association (INI) and the notary community view this case as a form of criminalization of notaries. In practice, it often happens that notaries are dragged into the criminal realm due to administrative issues or procedural failures by parties who cannot distinguish the legal responsibility of notaries as public officials from the responsibility of individuals personally. For this reason, it is important to emphasize that the legal responsibility of notaries must be viewed proportionally. If the loss of SHM occurs due to negligence in staff supervision, then administrative or ethical responsibility is more relevant than criminal, as long as no element of intent is found to embezzle or enrich oneself. In the context of ethics and discipline, the Notary Honorary Council has the authority to assess whether a notary's actions have violated the code of ethics or not. In accordance with Article 66 of the UUJN, before examining a notary in a criminal case, investigators must first obtain approval from the Notary Honorary Council (MKN). However, in many cases, this stage is often ignored or not carried out properly, which ultimately strengthens the perception of the criminalization of the notary profession.

The notary's legal responsibility for the loss of SHM within the scope of his/her job duties remains attached if there is evidence of negligence, neglect of the security procedure, or violation of the principle of caution that is standard in the notary profession. However, if the certificate is taken by the legal owner without coercion and the notary does not receive any personal benefit from the loss of the object, then the criminal aspect becomes difficult to prove, unless there is malicious intent or engineering together with other parties. It is important for notaries to have a good documentation, receipt, and supervision system for every document that enters and leaves their office, and always ask for written approval from the parties before returning the document, even to the legal owner, in order to avoid disputes and criminal risks.

3.2. Debtor's Actions in Taking Back Certificates Without Notary's Consent Can Eliminate Allegations of Embezzlement by Notary

From the perspective of criminal law and civil law, the debtor's action of taking back his certificate of ownership without the notary's consent, in the case of Notary Albert Riwukore, has caused a polemic surrounding the existence of a criminal element in the alleged embezzlement. This case stems from the loss of nine Certificates of Ownership (SHM) belonging to Rachmat, which were originally deposited at the notary's office as part of the credit guarantee binding process between Rachmat as the debtor and BPR Christa Jaya Perdana as the creditor. In the chronology of the case, the certificates were handed over to Albert's notary staff and then returned to Rachmat for the division process at the BPN, until finally the nine SHMs were taken back by Rachmat on the grounds of being photocopied, without the notary's permission or confirmation from BPR as the creditor. To analyze whether this action eliminates the alleged embezzlement by the notary, it must be examined from the elements of the criminal act of embezzlement based on Article 372 of the Criminal Code. The article states:*"Anyone who intentionally and unlawfully owns something which wholly or partly belongs to another person and which he has not because of a crime, shall be punished for embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah."*The main element of embezzlement is the intention to take control of someone else's property unlawfully. In this context, the notary is accused of embezzling the SHM which actually belongs to Rachmat, but the substance of this charge needs to be tested from the aspect of role, status of goods, and the perpetrator's will.

Legal facts show that the certificate that is the object of the case is legally owned by Rachmat, not by BPR. The certificate is only used as collateral in the credit agreement and the binding of Mortgage Rights (HT). Legally, the ownership rights to the certificate are still attached to Rachmat as long as there has been no execution of HT or another agreement that transfers ownership rights to BPR. Therefore, Rachmat's action in taking back his certificate, even without the approval of a notary, cannot be qualified as an unlawful act in the context of ownership. This is reinforced by the results of the initial investigation at the Kupang Police which stated that Rachmat's actions were legally justified because he was the legal owner of the SHM. From a criminal law perspective, embezzlement cannot be charged if the goods are not legally owned by another person. Because ownership remains with Rachmat, there is no unlawful element if he takes back his goods, even if it is done without prior notification.

From a notary's point of view, legal responsibility can only be attributed if there is negligence or neglect of the taking which is contrary to the obligations of the position. Based on*Law Number 30 of 2004 concerning the Position of Notary* as amended by *Law No. 2 of 2014*, a notary has an obligation to safeguard documents entrusted to

him in the course of his duties (Article 16 paragraph (1) letters c and m). However, the submission or retrieval of documents by the owner without any act of forgery or coercion does not necessarily indicate bad faith or embezzlement by the notary. Moreover, if the notary does not know or cannot directly prevent the retrieval, then the element of malicious intent (mens rea) in Article 372 of the Criminal Code is not fulfilled. In the case of Albert Riwukore, there is no evidence that the notary actively submitted or transferred the SHM to an unauthorized party. Based on the information provided by Albert's staff and evidence of a written statement, Rachmat took the SHM himself on the pretext of photocopying it, a pretext that is often used in legal practice to request access to legally owned documents. Although administratively it can be questioned why the notary allowed the owner to take the certificate without confirmation to the BPR, in criminal law, administrative negligence cannot immediately be used as a basis for an accusation of embezzlement.

Furthermore, in the civil case filed by BPR against the notary, BPR's lawsuit in two cases, namely No. 184/Pdt.G/2018/PN Kpg and 186/Pdt.G/2018/PN Kpg, was declared inadmissible (niet ontvankelijk verklaard). This decision indicates that even in civil cases, the panel of judges did not find sufficient legal basis to declare the notary responsible for the loss of the certificate. This shows that BPR's lawsuit does not meet the formal or material requirements to be granted, which in turn weakens the position of the alleged criminal act. Then, when the NTT Police stopped the investigation (SP3) in early 2022, it also reflected that law enforcement officers initially did not find sufficient criminal evidence to continue the case against the notary. SP3 is certainly not issued without careful legal consideration, especially when it concerns the profession of a public official such as a notary. Although the pretrial motion later annulled the SP3 and re-determined Albert as a suspect, the determination was only procedural in nature—namely regarding whether the reason for terminating the investigation was legally valid—not proving the existence of material elements of embezzlement.

On the other hand, the demonstration and protest by the NTT Notary and PPAT Association reflect the concerns of the profession regarding the potential criminalization of administrative or negligent actions. In law, the distinction between administrative negligence and malicious intent (mens rea) is fundamental. A notary cannot be punished simply for negligently supervising staff or failing to record the retrieval of documents, as long as there is no malicious intent or conspiracy to embezzle goods. This is in accordance with the principle *no crime without fault*, namely there is no crime without fault. The debtor's action of taking back his own certificate without a notary's permission, although unethical or violating procedures, cannot immediately make the notary a perpetrator of embezzlement. Because the certificate does not belong to another person in the legal sense, and because there is no evidence of malicious intent from the notary to control or transfer the goods unlawfully, the elements of Article 372 of the Criminal Code are not fulfilled. From this perspective, the case against Albert Riwukore should be an important lesson regarding the need for clarity on the standards of responsibility of public officials, limitations on the criminal realm for administrative errors, and respect for the principle of the presumption of innocence in the criminal justice system.

4. CONCLUSION

Based on the discussion above, it can be concluded that the legal responsibility of a notary for the loss of certificates entrusted to him/her within the scope of his/her duties is closely related to the principle of caution, the obligation to store documents, and administrative and ethical responsibilities in accordance with the provisions of the Notary

Law (UUJN). In the case of Notary Albert Riwukore, although there was no indication of malicious intent or unlawful control of the nine lost SHMs, negligence in supervising and documenting the retrieval of certificates by the debtor indicated the potential for procedural violations that could be accounted for ethically or administratively, not criminally. This is also supported by the fact that the SHMs were taken by the legal owner, and there was no evidence that the notary obtained personal benefits or conspired to embezzle the documents. Thus, the accusation of embezzlement against the notary is legally weak, because the elements of intent and unlawful control as required by Article 372 of the Criminal Code are not fulfilled.

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