

## The Responsibility of the Notary in Providing Legal Information to the Parties on the Deed He Made

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**Abstract.** *Legal Counseling is carried out by providing clear, directed explanations, so that the meaning and purpose of the authentic deed are easily understood and understood by the parties. Sometimes people only provide explanations and documents without knowing the legal issues. Article 15 paragraph paragraph 2 letter e of Act No. 2 of 2014 explains that, "in addition to the authority as referred to in paragraph (1), the Notary is also authorized to: provide legal counseling in connection with the making of the Deed." Here it is explained that every notary is obliged to explain the responsibility to provide legal counseling to the parties/clients. This research purposed to review and analyze the Responsibilities of the Notary in providing legal counseling to the parties for what he did in the City of Kendari, and to examine and analyze the obstacles and solutions of the notary in providing legal counseling to the parties for what he did. The research approach method used in this research was an empirical juridical research method. The type of data used in this research Primary Data includes Act No. 2 of 2014 concerning Notary Positions and Secondary Data containing books and documents other supporters. Collecting research data with interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is a qualitative approach in order to obtain descriptive data. The results of the study show that: First, the Notary's responsibility in providing legal counseling is only to provide advice to the parties/clients, it is the client who has the decision in the deed as long as it does not conflict with Article 1320 of the Criminal Code, so that there are no consequences law in the future. Second, the barriers are competence, clients who do not explain in detail, communication, differences in interpretation, and client characteristics as well as upgrading solutions for notaries, supporting documents, communication skills, discussion for solutions, and psychological approaches.*

**Keywords:** Deed; Responsibility; Notary.

## 1. Introduction

Based on Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, it is explained that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in the UUJN or based on other laws. Notaries in carrying out their positions are obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions, which are described in Article 16.

To ensure certainty, order, and legal protection, a written hill tool is neededare authentic regarding acts, agreements, stipulations, and legal events made before or by an authorized official. Notaries as public officials who carry out the profession in providing legal services to the community, need to get protection and guarantees in order to achieve legal certainty.

RAEmma Nurita stated that the world of notaries is a phenomenal world with all the attributes and activities that are carried out daily by notaries, from various activities to providing the best service for their clients/parties. The position of a notary is held or its presence is required by the rule of law with a view to assisting and serving the community who need authentic written evidence regarding legal circumstances, events, or actions. On this basis, those who are appointed as notaries must have a passion to serve the community<sup>1</sup>.

Chapter 15 verses 1, which reads:

"The notary has the authority to make an authentic deed regarding all acts, agreements and stipulations"required by laws and regulations and/or desired by the interested parties to be stated in the Authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, providing grosse, copies and quotations The deed is not assigned or excluded to other officials or other persons who determined by law."

One of the authorities given to a notary as a public official is to make an authentic deed in addition to other authorities determined by law.

"In the Law on Notary Positions as well as in the Notary Code of Ethics it explicitly mentions or formulates that Notaries provide legal counseling in relation to deeds as stated in Article 3 of the Notary code of ethics that Notaries in carrying out their positions provide legal counseling to achieve high legal awareness in

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<sup>1</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

community so that people realize and live up to their rights and obligations as citizens and members of society<sup>2</sup>.

Mochtar Kusumaatmadja has reminded us that he said that technical skills education without professional and ethical responsibility education is dangerous. This means that what is said is certainly undeniable, because if education only concerns technical skills without being accompanied by professional and ethical responsibilities, it will result in the person with the profession going wild, because he cannot carry out his profession professionally, which in the end will cause losses. a great deal to persons with the legal profession as a whole<sup>3</sup>.

As a public official, a notary is required to be responsible for carrying out his authority in order to provide legal counseling to the parties before the deed is made. If in the future the deed that has been made turns out to contain a dispute, this definitely needs to be questioned, whether the error in the deed was caused by a notary or the parties did not provide incorrect information beyond the knowledge of the notary or was there an agreement made between the notary and one of the parties. facing or the fault of the parties who did not provide the documents correctly. So that a deed that has been made by a notary does not contain legal defects in the future, due to the notary's error in not providing legal counseling first.

Legal Counseling is carried out by providing a directed, clear, so that the meaning and purpose of the authentic deed are easily understood and understood by the parties people only provide explanations and documents without knowing legal problems. Article 15 paragraph paragraph 2 letter e of the Law on the Position of a Notary Number 2 of 2014 explains that, "in addition to the authority as referred to in paragraph (1), a Notary is also authorized to provide legal counseling in connection with the making of the Deed." Here it is explained that every notary is obliged to explain the responsibility of providing legal counseling to the parties/clients.

## 2. Research Methods

The research used in this research is an empirical juridical research method. Empirical juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object. To obtain the data needed in this study<sup>4</sup>. The author uses two kinds of data sources, namely, Primary Data

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<sup>2</sup> Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>3</sup> Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). Code of Ethics and Position of Notary in Indonesia. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>4</sup> Bambang Waluyo, (1996), *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta,

and Secondary Data, Data Collection Techniques This research to obtain the data needed the author will use data collection techniques namely library research and interviews. Data collected both from library research and obtained in the field will then be analyzed with a qualitative approach in order to obtain descriptive data. Given the nature of the research and the object of research, all the data obtained will be processed qualitatively<sup>5</sup>.

### 3. Results and Discussion

#### 3.1. Responsibilities of Notaries in Legal Counseling on the deed he made

Based on the results of research that has been carried out through interviews with Mr. Muhammad Ishak, SH, M.Kn., MM Notary and PPAT in Kendari City, on Thursday, June 16, 2022 at 11:00, explained that the definition of the word authority is the right and power that have to do something<sup>6</sup>. One of the powers of a Notary is its authority to provide counseling to the parties/clients, which is explained in Article 15 of the UUJN which reads that<sup>6</sup>:

##### Chapter 15

- Notaries are authorized to make authentic deeds regarding all actions, agreements, and provisions required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, providing grosse, copies and quotations of the deed. , all of this as long as the making of the deeds is not assigned or excluded to other officials or other people stipulated by law.
- Notary Public also authorized:
  - ratify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
  - book letters under the hand by registering in a special book;
  - make copies of the original underhand letters in the form of copies containing descriptions as written and described in the letter concerned;
  - To do endorsement compatibility photocopy with letter original;

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<sup>5</sup> Cholid Narkubo and Abu Achmadi, (2001), *Metodologi Penelitian*, Jakarta: Bumi Aksara,

<sup>6</sup> E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C> <https://www.euredd.efi.int/publications/opportunities-for-improving-land-tenure-and-land-use-rights-in-indonesia>, accessed on March 24, 2022

- provide legal counseling in connection with the making of the deed;  
f. make a deed related to land; or g. make a deed of auction minutes.
- In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other powers as regulated in the laws and regulations. the authority to provide counseling to the parties/clients, in the counseling the notary only provides input to the parties/clients on what deed will be made, based on information, evidence from the client.

The notary explains that the responsibility of a notary in legal counseling is only to provide advice to the parties/clients, the client is the one who has the decision to make the content of the deed, as long as it is not contradictory to Article 1320 of the Criminal Code No. **1320** which reads:

"four terms of the agreement;

- deal they which binds itself;
- skills for make an engagement;
- a tree problem certain;
- something because which no forbidden"

Legal counseling is not an obligation of a notary but an authority which means that if a notary does not provide legal counseling he will not get any sanctions, only moral sanctions. sanctions against Notaries. While the obligations, namely the Obligations of a Notary, are stated in Article 16 of the UUJN which reads:

- "In carrying out his position, a Notary must:
  - Actsafe, honest, thorough, independent, impartial, and safeguarding the interests of parties related to legal actions;
  - Make a Deed in the form of Minutes of Deed and save it as part of the Notary Protocol;
  - gluing letter and documents as well as fingerprint finger face on Minutes of Deed;
  - Secrete Grosse Deed, Copy Deed, or Quotation Deed based on MinutaDeed;
  - provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;
  - keep everything about the Deed he made and all information obtained for the making of the Deed in accordance with the oath/promise

of office, unless the law provides otherwise;

- bind the Deed he made in 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds can be bound into more than one book, and record the number of Minutes of Deed, month, and year of manufacture on the cover of each book;
- make a list of the deed of protest against the non-payment or non-receipt of securities;

In the provisions of Article 16 paragraph (7) UUJN letter m, the reading of the deed by a Notary is not required, if desired by the appearers because the deed has been read by themselves, knows and understands the contents of the deed by the appearers. If this is desired by the parties, the Notary shall include the information in the deed or at the end of the deed<sup>7</sup>.

The theory of legal responsibility is needed to be able to explain the relationship between the responsibilities of a notary related to the authority of a notary based on the UUJN which is in the field of civil law. The position of a notary is an institution created by the state.<sup>8</sup>

For example, the parties/clients want to make a deed, the role of the notary here in the responsibility of legal counseling, the notary records anything desired by the parties/clients as long as it does not conflict with Article 1320 of the Civil Code, the legal terms of the agreement, explain the contents and meaning of the deed that he will make, and give advice, but here it depends on the client whether to accept the advice or not, because basically the notary only records what the party wants. Notaries have a goal, one of which is to get enlightenment on the legal actions that the client will do so that in the future there will be no legal consequences. based on the rights and obligations of a notary in UUJN.

### **3.2. Obstacles and Solutions in Notary Responsibilities in counseling law on deed which he made**

Notaries in carrying out one of their authorities, namely legal counseling in making a deed is not as easy, and not as smooth, in legal counseling there are

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<sup>7</sup> Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights>  
Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227

<sup>8</sup> Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.

obstacles in making it, but in an obstacle there must be a solution, the author will explain and describe the results of his research:

Based on the results of research that has been carried out through interviews with Mr. Muhammad Ishak, SH, M.Kn., MM Notaries and PPAT in Kendari City, on Thursday, June 16, 2022 at 11:00, explained that the notary barriers that often occur in providing legal counseling in the making of the deed is:

- Competence of Notary Public

In a developing era, there are regulations and systems that usually change, therefore notaries have their own Wa Group consisting of notary groups throughout Indonesia, provincial notary groups, and regional notary groups which are useful for notification of regulatory changes or regulatory updates and gatherings. between fellow notaries, but in the problem there are some notaries who do not have WA so to find out changes in regulations or rules and the notary system does not know it.

- The parties/ client does not can describe by details

The parties/clients who appear before the Notary are sometimes to describe or describe the case, what happened, and incomplete documents.

- Communication

First, I will discuss about the parties/clients who cannot speak Indonesian. The local parties/clients sometimes cannot speak Indonesian, so the notary does not know what he means, not all notaries have regional language translators, sometimes the notary knows the language. area if he has lived/lived in the area, while for the English language generally a notary knows but is not very fluent in English, the deed may not use English as stated in Article 43 of the Law on Notary Positions which explains that:

- Mandatory deed made in language Indonesia
- In the event that the appearer does not understand the language used in the Deed, the Notary is obliged translate or explain the contents of the Deed in a language understood by the appearer.
- If the parties so desire, the Deed can be made in a foreign language. (4) In the event that the Deed is made as referred to in paragraph (3), the Notary must
- translate it to in language Indonesia.
- If Notary can not translate or explain it, the Deed is translated or explained by an official translator.

- In things exist difference interpretation to the contents of the Deed as meant on paragraph (2), then which used is a deed made in the Indonesian language

- Basic education

The parties/clients have different basic education, because there are some clients who have minimal education so that when a notary explains he doesn't understand, so the notary must be smart and can approach him more clearly, explain clearly the contents of the deed he will make. but sometimes there are parties who want to directly sign the deed without knowing the contents of the deed. why a notary must provide counseling to the parties/clients seriously because a notary is honest without wanting to harm his client and the client/parties will not experience legal consequences in the future.

- Difference interpretation law

The difference in legal interpretation between the notary and the parties is meant to be rare, there are only a few parties/clients who differ in the content of the deed to be made, but the notary still follows the decisions of the parties/clients, this is where legal counseling is very important in deed making.

- Characteristics client

as a notary we must know the psychologists of the parties/clients, because sometimes there are parties/clients who do not want to accept suggestions from a notary.

Barriers to notaries associated with the theory of legal certainty explain that the law must apply firmly in society, contain openness, so that anyone can understand the meaning of the law. a legal provision. the meaning of this explanation if the notary does not provide legal counseling as it should, the parties/clients do not understand what the contents and meaning of the deed are, this is where the theory of legal certainty applies.

Solution from obstacles on are:

- Upgrade

The upgrading in question is such as seminars, notary practicums, so as not to experience delays in changing existing regulations, in general, central notaries do upgrading every few months, because there are regulations that change but notaries in the regions rarely occur, according to the author, if possible, make routine activities to improve the competence of notaries and friendship between notaries.

- Complete documents



More complete the documents to be used and check the certainty of the document, for example the party/client who wants to buy and sell the ship, provide documents to carry out the transaction, before carrying out the notary sale and purchase agreement checks whether the ship is collateralized or not, it turns out that the documents are fake, so that the notary will reproduce the supporting documents and be thorough on these documents.

- Skills of communication

Notaries are passive in providing legal counseling, but notaries are also active with their parties/clients for an emotional approach. as well as further upgrading English and regional languages or preparing translators.

- Discussion for resolution

If there is a difference of opinion between a notary and the clients, have a discussion in order to get decisions in accordance with applicable regulations.

- Approach of psychology,

In order notary know more psychology party/his client.

#### 4. Conclusion

The conclusion is that the responsibility of a notary in legal counseling is only to provide advice to the parties/clients, it is the client who has a decision in the deed as long as it is not contradictory in Article 1320 of the Criminal Code, the legal requirements of an agreement, so that there will be no legal consequences in the future. And the Notary's Responsibility in Legal Counseling is the authority of a notary as stated in Article 15 of the Law on Notary Positions. And the Obstacles of Notary Responsibilities in Legal Counseling, namely . Competence of a Notary, the Client cannot disclose the case in detail, Good communication between the parties/client and a Notary, Differences in legal interpretation between the Notary and the parties/client, the character of the parties/client.

#### 5. References

##### Journals:

- [1] Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>
- [2] E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

- [3] <https://www.euredd.efi.int/publications/opportunities-for-improving-land-tenure-and-land-use-rights-in-indonesia>, accessed on March 24, 2022
- [4] Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.
- [5] Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights>
- [6] Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>
- [7] Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227
- [8] Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

**Books:**

- [1] Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia*, UII Press., Yogyakarta
- [2] Ahdiana yuni Lestari & Endang Heriyani, (2009), *Dasar-Dasar Pembuatan Kontrak dan Aqad*, Mocomedia, Yogyakarta
- [3] Ana Retnoningsih and Suharso, (2006), *Kamus Besar Bahasa Indonesia*, CV.Widya Karya, Semarang
- [4] Bambang Waluyo, (1996), *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta,
- [5] Cholid Narkubo and Abu Achmadi, (2001), *Metodologi Penelitian*, Jakarta: Bumi Aksara,