

Responsibility Of The Notary Department As A Consequence Of Secret Of The Minutes Deed Misuse By Its Employees

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Abstract. The purpose of this study is to identify and analyze: 1) The importance of the notary's obligation to safeguard the confidentiality of the contents of any particular act as referred to in Article 16 paragraph 1 of the letter (f) of Act No. 2 of 2014 Regarding Change of Law of 30 of 2004 About the Notary Department. 2). It is the responsibility of the Notary department for the abuse of confidentiality by millions of employees.

This study is a type of normative juridical research, using a legislative and conceptual approach to Data collection derived from primary and secondary data, using interview methods and library studies. Data analysis techniques using qualitative data analysis.

The result of the research is 1).The importance of the Notary's obligation to safeguard the confidentiality of the contents of the deed, particularly in the matter of Article 16 paragraph 1 letter (f) of Act No. 2 of 2014 About the Amendment of Act No. 30 of 2004 About the Notary Department is to keep everything confidential. and any evidence obtained for the making of the deed in accordance with the oath / appointment of the department. 2). The responsibility of the notary office is due to the misuse of confidentiality by the employees although in this case the notary does not commit a direct offense, because in one of the principles of civil liability there is a principle of absolute responsibility, whereby the person commits an error indirectly (due to negligence or negligence) heart) can be held responsible for the loss suffered by someone.

Keywords: Notaries; Responsibilities; Minutes Deed.

1. Introduction

As the age progresses, it demands that one perform an activity that ultimately requires a Notary. Notary institutions not only apply to certain groups but also apply to all Indonesian Citizens who will take certain steps or legal actions in stating the fact that they require a notary institution for their implementation".⁴ In the current era of globalization, the Notary plays an important role in every development process, as the Notary is a department that runs the legal profession and services and provides assurance and legal certainty to the parties, especially in the process of development.⁵Notary as public official, one of the organs of the State equipped with

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⁴ Wawan Tunggal Alam, 2004, *Memahami Profesi Hukum*, Jakarta: Dyatama Mileni, p.88.

⁵ NG Yudara, 2006, *Notaris dan Permasalahannya (Pokok-Pokok Pemikiran Di Seputar Kedudukan Dan Fungsi Notaris Serta Akta Notaris Menurut Sistem Hukum Indonesia)*, Papers presented in the framework of INI Congress in Jakarta: Renvoi Magazine No. 10.34.III, p.72

the legal authority to provide public service, specializing in the making of the Authentic Act as a perfect instrument of legal action in the field of justice.⁶

In making an Authentic Act an Notary must follow the rules set forth in the Act No. 30 of 2004 and Act No. 2 of 2014 on the Notary Department, which is the basis for the law of the Notary Department, sets out the steps a Notary should take when making an authentic act. These measures include hearing the parties express their wishes, reading the contents of the act to the arbitrators, signing the deed and so forth) and it is specially created by law makers to ensure that what is written in the act contains what the parties want.⁷

One of the obligations of the Notary is to make the deed in the form of a deed and keep it as part of the notary protocol as set forth in Article 16 paragraph (1) of the letter b of the Notary Law, and in explaining the article, it is made clear that the obligation to keep the deed is partially of the Notary protocol, intended to keep the act of a deed intact by keeping the original in its original form, so that if there is a counterfeit or misuse of the text, the copy, or excerpt can be easily identified by matching it with the original.

In carrying out the office, the notary assisted his employees in assisting the notary's need in drafting an authentic deed to the extent of the deed signed by the parties, witnesses, and notaries called millions of deed. Minutes of the act shall be kept confidential by the notary, in accordance with the obligations of the notary in the Republic of Indonesia Number 2 of 2014 Regarding the 30th Amendment of the 30th Law of the Of 2014 Regarding the Notary Department Article 16 of 1 letter (f). The fact of the matter is that the secrecy of the millions is still abused by notary workers in the matter of confidentiality. There is no specific arrangement for workers to maintain the confidentiality of a million acts into a legal void. Accordingly, this study will be further discussed in the "Responsibility of the Notary Department as a consequence of the Misuse of Minutes by its Employees". The purpose of this study is to identify and analyze the urgency of the Notary's obligation to safeguard the confidentiality of the contents of the Act, particularly in light of Article 16 paragraph 1 (f) of Act No. 2 of 2014 on the Changes in Act No. 30 of 2004 on the Notary Department and the responsibility of the Notary department as a result of the misuse of confidentiality by its employees.

Research Methods

This study uses the method of normative juridical approach. Data collection is done by collecting primary legal materials, secondary legal materials, and tertiary materials.⁸As for the technique of data collection with methods of study and library studies. It is then treated and analyzed using the qualitative analysis method and then the deduction method using the deductive method, which is to think from the general to the specific

⁶Ibid, p. 73

⁷Tan Khong Kie (b), 2000, *Buku II Studi Notary Serba Serbi Praktek Notaris*, first printing, Jakarta: Ikhtiar Baru Van Hoeve, p. 261

⁸P. Zainuddin Ali, 2009, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, p. 47

or the specific by using normative tools to provide a clear answer to the research problem and purpose.⁹

2. Results and Discussion

3.1. The Importance of the Notary's Obligation in the Preservation of the Content of the Special Minutes Deeds of the Act in Article 16 Paragraph 1 of Letter (F) of Act No. 2 of 2014 Regarding Changes in Act No. 30 of 2004 About the Notary Department

Understanding of Notaries under Act No. 30 of 2004 and Act No. 2 of 2014 on Amendment of Act No. 30 of 2004 on the Notary Department Article 1 number 1 is a public official authorized to make authentic acts and other powers as may be specified in this law. Whereas in accordance with Article 1 of the Notary Department Rules, *Staadblad* 1860 No.3 affirms that : The notary is the only Public Officer authorized to make an Authentic Act on all acts, agreements and determinations, required by a general rule or by the stakeholders required to be specified in an authentic act, guaranteeing the date, keeping the act and giving Grosse a copy and the collection thereof throughout the making of the Act by a general Rule is not delegated or exempted to the Office or to any other person.

Today, in practice many notaries are called upon to be asked for evidence or called as witnesses in relation to an agreement made with the deed before the notary concerned, whether it is intentional or because they are unaware of the legality of the law, as if there were no secrets of the notary office, nor was there any right of the notary. A notary who cannot restrain himself will face the consequences of losing his public trust and will no longer be considered a trustee.¹⁰

Article 16 of the Notary Law (UUJN) explains:

In performing his or her duties, the Notary shall:

- Be honest, honest, fair, independent, non-partisan, and maintain the interests of the parties involved in legal action;
- Create a deed in the form of a deed and keep it as part of a notary protocol;
- Attaching letters and documents and fingerprints to millions of acts;
- Issue a deed of deed, copy of deed, or excerpt of deed based on millions of deed;
- To provide services in accordance with the provisions of this law, unless there is a reason to reject them;
- Confidentiality of any act made and any information obtained in the making of the act in accordance with the oath / appointment of the department, unless otherwise specified by law;

⁹Soerjono Soekanto and Sri Mamudji, 1995, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, p. 23.

¹⁰Muhammad Ilham Arisaputra, *Kewajiban Notaris Dalam Menjaga Kerahasiaan Akta Dalam Kaitannya Dengan Hak Ingkar Notaris*, Journal Volume XVII. 3 Year 2012 September Edition, p.1

- It binds a deed that makes it within one (one) month of the book to contain no more than 50 (fifty) deed, and if the number of deed cannot be contained in one book, the deed can be bound to more than one book, and record a minimum number of deed , month, and year of manufacture on the cover of each book;
- Make a list of acts of protest against unpaid or unwanted receipts;
- To make a list of the acts in respect of the will in the order in which it is made each month;
- To submit a list of deed as referred to in letter i or a list of wills in respect of a will to the ministry's central registry which carries out legal affairs within 5 (five) days of the first week of each month;
- Record in repertory the date of mailing list at the end of each month;
- Have a stamp or stamp bearing the national symbol of the republic of Indonesia and on the enclosure enclosing the name, title, and place of residence;
- To read the deed before the hearer attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a deed under the hand, and signed at the same time by the witness, witnesses, and notaries;
- Accepting Notary candidate internships.¹¹

One of the things that a notary must do is keep the secret or confidentiality of the act, in accordance with the obligations of the notary on oath and appointment in article 16 paragraph 1 letter (f) of the Republic of Indonesia Act No. 2 of 2014 Act No. 30 of 2004 About the Notary Department as well as article 4 paragraph 2 of the Republic of Indonesia Act No. 30 of 2004 About the Notary Department.

Regarding the oath of office Habib Adjie gave his opinion that the oath of office could be classified into two kinds of things to understand:¹²

- The notary will be responsible to God, for in that he swears by his own religion and belief.
- The notary shall be responsible to the State, as the country will trust the notary to carry out the functions of his office as the duty of the state, and the responsibility of the people. The meaning is the public's belief in the notary's office in the making of an authentic act and the public's belief in the confidentiality of his authentic deed made by or in the presence of a notary.

Fundamentally saving the deed is a notary obligation, so the Notary should keep the Notary Protocol (which contains the deed of the deed) and not allow the Notary Protocol to be held by his employees. This is because the Notary Protocol is a collection of documents that are archives of the state to be kept and kept by the Notary (Article 1 no. 13 of the Notary Department Act). Therefore it is legal action for the Notary to not be able to keep his or her minions properly, it will result in legal consequences for the notary who is unable to keep his / her minions.¹³ The Minute Act is the original of the Act which lists the signatories of witnesses, witnesses, and Notaries, kept as part of the Notary Protocol.

¹¹ Article 16 of Act No. 2 of 2014 on the Notary Department

¹²Habib Adjie, 2009, *Sekilas Dunia Notaris dan PPAT Indonesia*, Bandung: Mandar Maju, p. 48.

¹³ Lely, *Analisis Yuridis Terhadap Kelalaian Notaris Dalam Penyimpanan Minuta Akta*, Malang: Universitas Brawijaya

During his tenure, a notary was assisted by several workers. Workers here have the task of assisting the notary in general, such as preparing all the requirements for the making of an act, and all the requirements for the keeping of millions, or in particular, being at the same time a witness of an agreement made before the notary in the place where he works. Thus workers here have broad access to a deed made by or in the presence of a notary where they work, as these workers sometimes print the deed through a printer machine after compiling parts of the deed through computer media. Not to mention the millions of acts that have been stamped or kept, these workers are usually the ones who do it.¹⁴

Minutes of the Act may only be granted, shown or notified to a direct interest, heirs or beneficiaries. This is as set out in Article 54 of Act No. 2 of 2014 Regarding Amendment to Act No. 30 of 2004 on the Notary Department, stating that:

Notaries may only give, disclose, or disclose the contents of the Act, the Grosse Act, a copy of the Act or the Collection of the Act, to persons directly interested in the Act, heirs, or beneficiaries, unless otherwise specified by law.

Notaries who violate the provisions of the foregoing may be subject to sanctions in the form of written warnings, temporary cessation, respectful cessation or cessation of termination.¹⁵

At the close of each act is stated the number of changes, drawings, and additions. In addition, in Article 51 of the UUJN the Regulation of the Notary authority fixes a written error in an act. As for the provisions of Article 51 of the UUJN, it is stated that the Notary is authorized to correct the typographical and / or typographical errors contained in the signed Minutes of the Act. Therefore, the correction can be made by making the event news and notifying it of the original Minute Act by stating the date and event number of the corrective event.

At least in carrying out his duties the Notary has a fundamental basis in assessing an act which is the principle of presumption of law or better known as the *presumptio iustae causa*, meaning that the act made by the Notary must be considered valid until there is a statute declaring it invalid. In addition, the Notary in making the act does not investigate the validity of the letters filed by the person making the act. This meant that the Notary as a public servant could act swiftly and accurately, as well as stating whether or not it was a letter in the event of counterfeiting Notary's authority, so the Notary was merely examining the administrative power of making an act.

3.2. Responsibility of the Notary Department as a Consequence of Secret of the Minute Deed Misuse by its Employees

Accountability is a form of responsibility that a person takes on the person he harmed. OP Simorangkir argues that responsibility is the responsibility to assume or take

¹⁴ Muhkam Arif, 2015, *Pertanggungjawaban Perdata Notaris Akibat Penyalahgunaan Kerahasiaan Minuta Akta Oleh Pkerjanya*, Journal of the Magisterial Studies Program, Faculty of Law, University of Brawijaya, p.1

¹⁵ Interview with Mr. Soegiono, SP., M.Kn, PPAT Notary in Semarang City, on January 20, 2020

responsibility for everything that comes with it, in view of any good or bad acts, so it is the responsibility for the consequences of the bad acts that he has committed.¹⁶ The notarial obligations to a deed he makes are as follows:¹⁷

- The notary is required to make a good and proper deed, meaning that the act is in compliance with the elements or requirements of the law and the wishes of the parties as a result of his office.
- The notary is required to make a high quality act which means that the act he made must be in accordance with the benefit or rule of law which the parties desire in the true sense, without engineering in the making of the act.
- It has a positive impact on anyone who recognizes the notary deed has the power to prove it.

In addition to these responsibilities, the notarial obligations listed in the Notary Law are a duty that a notary must fulfill or perform in a deed from the beginning of the making until after the making of the deed. The Civil Code explains some of the responsibilities, among others:¹⁸

- Responsibility for the element of wrongdoing (article of intent and negligence), Article 1365 of the Civil Code states that every act of lawlessness that causes harm to another, requires the person making the loss to compensate for the loss,
- Responsibility for elements of wrongdoing, in particular the elements of negligence, article 1366 of the Civil Code explains that every person is responsible not only for losses caused by negligence and lack of conscience,

Absolute or irresponsible liability, in the limited context, Article 1367 of the Civil Code explains that a person is not only liable for damages caused by his or her own actions, but is required to be held responsible for damages caused by those for whom he or she is responsible, the person under his supervision. Article 1367 of the Civil Code states that: A person is not only responsible, for the loss caused by his own actions, but also for the losses caused by the acts of those who are his dependents or for the goods under his control. Parents and guardians are responsible for the losses caused by the minor children, who reside in them and for whom they exercise parental or guardian authority. Employers and persons who appoint others to represent their affairs are liable for damages caused by their servants or subordinates in performing the tasks assigned to them. The school teacher or head teacher is responsible for the damage caused by his or her students during the time they are under his or her supervision. The above-mentioned responsibilities are terminated, if the parent, school teacher or head teacher proves that they cannot prevent the act by guessing themselves responsibly.

In principle, an act against the law is not just a violation of the law, but also violates the morality, obedience or infringement of the rights of others who may be harmed.

In Article 1365 of the Civil Code, an unlawful act must have several elements as follows:

- There is an act against the law,

¹⁶OP Simorangkir, 1998, *Etika Jabatan*, Jakarta: Aksara Persada Indonesia, p. 102.

¹⁷Abdulkadir Muhammad, 2006, *Etika Profesi Hukum*, Bandung: Citra Aditya Bakti, p. 93

¹⁸ Munir Fuady, 2002, *Perbuatan Melawan Hukum*, Bandung: Citra Aditya Bakti, p.3

- There is an element of error,
- There is a loss that is suffered,
- There is a causal relationship between regret and loss.

From these elements must be fulfilled, when one will demand the civil responsibility of one. In this case, in the event of abuse of the securities of a million act the parties will be harmed either materially or non-materially.

One form of civil liability is absolute responsibility, whereby a responsibility is imposed on someone who does not directly commit a third party harm. In this case the notary did not make a direct mistake, but because of the Law of the Republic of Indonesia No. 2 of 2014 on the Amendment of Act No. 30 of 2004 on the Notary Department, the notary has the obligation to maintain the confidentiality of the contents of a deed as well as in relation Notary work acts as the employer or employer, so the notary will be responsible to third parties, especially in the case of civilians.

The notary's responsibility for the exercise of the authority of his office is to guarantee the legal certainty of the act he has made. Because the theory of legal certainty requires the existence of law-making efforts in legislation made by competent and competent authorities, the rule has a juridical aspect that can guarantee legal certainty.

3. Closing

3.1. Conclusion

Based on in the description above, the authors' conclusions in this study are as follows:

- The importance of the Notary's obligation to safeguard the confidentiality of the contents of the deed, particularly in the matter of Article 16 paragraph 1 letter (f) of Act No. 2 of 2014 About the Amendment of Act No. 30 of 2004 About the Notary Department is to keep everything confidential. and any evidence obtained for the making of the deed in accordance with the oath / appointment of the department. Minutes of the Act may only be granted, shown or notified to a direct interest, heirs or beneficiaries. This is as set out in Article 54 of Act No. 2 of 2014 About the Amendment of Act No. 30 of 2004 on the Notary Department, so that the Notary in violation of the provisions of the foregoing could be subject to sanctions in writing,
- The responsibility of the notary office is due to the misuse of confidentiality by the employees although in this case the notary does not commit a direct offense, because in one of the principles of civil liability there is a principle of absolute responsibility, whereby the person commits an error indirectly (due to negligence or negligence) heart) can be held responsible for the loss suffered by someone. In addition to these principles, in a working relationship between the notary and the worker, the notary is the employer of the worker, Article 1367 of the Civil Code stipulates that the employer (may also be called the employer) be liable for any wrongdoing by the worker (worker), where the error causing the other party to suffer loss.

3.2. Suggestions

The authors' suggestions in this study are:

- To make the notary more optimistic in keeping the law under the law. The notary may also be more cooperative in giving evidence regarding the act he made to the investigator for the purpose of investigating with a fair, transparent, and scientific examination.
- It is important for the employees to be more aware and aware of the laws, especially the law of the Notary department, so that no harm will be done to the Notaries and the hearers.

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