

The Legal Position of Notarial Deeds That Include an Exoneration Clause

Bimo Otik Fajar Nugroho

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
bimootik@gmail.com

Abstract. *This thesis discusses the application of the Legal Position of Notarial Deeds Which Include an Exoneration Clause. In many jurisdictions, agreements made by a notary have strong legal standing and are valid. Notaries have a role as public officials who have the authority to create and issue certain legal documents, including agreements, which are known as authentic deeds. An exoneration clause is a clause that reduces or limits the responsibility of one party in an agreement. However, legal provisions regarding exoneration clauses may vary in each jurisdiction. The problems in this thesis are 1) the legal position of a Notary's deed which is made by a notary and which contains an exoneration clause. 2) the Notary's responsibility for making a Deed which contains an exoneration clause. The aim of this research is to find out and analyze the obstacles and solutions to the application of exoneration clauses to notarial deeds. The method used in this research is an empirical juridical approach. This research specification uses descriptive analysis. The type and source of data used in this research is primary data, namely from interviews, while secondary data was obtained through literature study. The data collected in this research was divided into 2 (two), namely primary data collection which was carried out by interviews and secondary data collection which was carried out by collecting data contained in statutory regulations, articles, books and so on. The data analysis method used in analyzing the data is qualitative analysis. The inclusion of an exoneration clause in a deed made before a Notary does not significantly affect the legal position of the Notary, except for special deeds made by him. However, if the Notary chooses to still include the exoneration clause in the deed, it is not wrong and does not make the Notary vulnerable or weak. A Notary's responsibility is only limited to formal truth in an authentic deed made by him. The notary does not have the responsibility to assess the material truth of the information he obtains from the parties. The responsibility of a Notary is based on the authority, substance and procedure for making the deed made by him*

Keywords: Exoneration; Legal; Responsibility.

1. Introduction

An exoneration clause is a clause that reduces or limits the liability of one party in an agreement. Exoneration clauses can appear in various forms. First, the clause can be in the form of a complete release from liability in the event of a breach of promise (default). Second, it can be in the form of a limitation on the amount of compensation that can be claimed. Third, it can be in the form of a time limit for the injured party to file a lawsuit or claim for damages. Finally, in terms of time limits, the time limit is often shorter than that stipulated by law to file a lawsuit or claim for damages.¹

An exoneration clause is simply defined as a clause that excludes obligations or transfers responsibility in a contract or agreement. For example, in a contract or sale agreement, an exoneration clause may state that one party will not be liable for financial losses arising from failure to provide services. However, in cases of willful misconduct or gross negligence, such a clause may not apply.

A notary is a person who is authorized to make a deed. A notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary according to the form and procedures stipulated in the Notary Law.² Authentic Deeds have perfect proof. The perfection of a Notarial deed can be used as evidence, so the deed must be seen as it is, there is no need to evaluate or interpret it otherwise, other than what is written in the deed. The legal act contained in a notarial deed is not a legal act of the notary, but the deed contains the legal act of the parties who request or wish by consensus for the legal act to be contained in an Authentic deed.³

Some of these legal acts are not in accordance with the Indonesian Notary Law because according to the jurisprudence of the Indonesian Supreme Court Number 702 K/Sip/1973, dated September 5, 1973, a notary does not have an obligation to seek material truth with what is stated by the person appearing because one of the notary's duties is only to record what the parties want. An exoneration clause is a kind of statement that is restrictive or eliminates responsibility that should be his obligation. An exoneration clause is "a clause in an agreement which stipulates the release from certain responsibilities, which according to law should be his responsibility". The existence of this exoneration clause is certainly very detrimental because those who want the agreement are only faced with 2 (two) choices, namely signing or rejecting the agreement presented to him without being able to negotiate what he wants.⁴

Notaries seek ways to protect themselves from lawsuits from the parties or third parties. One way chosen by some Notaries is to include a clause in the body of the deed before the end of the deed that reads "the parties in this deed state

¹Sutan Remy Sjahdeini, Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia, Ctk I, Indonesian Bankers Institute, Jakarta, 1993, p76

²Widhi Handoko, State Domination of the Notary Profession Between Ideas and Reality. PT Roda Publika Kreasi, 2019. page 103

³GHS Lumban Tobing, Notary Regulations, Erlangga, Jakarta, 1999, p. 39.

⁴Zakiyah. Journal: Exoneration Clause in the Perspective of Consumer Protection. (Banjarmasin: Lambung Mangkurat University), 2018. page 436

that they have understood and comprehended the contents of this deed, so that the parties hereby state that they are fully responsible for this and release the Notary and witnesses from any lawsuits from the parties and third parties from all and any consequences arising from the making and execution of this deed". An exoneration clause in an agreement can actually affect a notary in some cases, depending on the applicable legal provisions and the context of the agreement in question. An exoneration clause aims to limit or reduce the liability of one party in an agreement. In the context of a notary's work, it is possible for an exoneration clause to affect their liability in making legal documents or notarial deeds. However, there are certain limitations related to the authority and liability of a notary that may not be completely excluded by an exoneration clause.

Notaries usually have legal liability related to errors in the process of making legal documents, negligence, or inaccuracy of information conveyed in the deeds they make. Therefore, even though there is an exoneration clause in an agreement, the notary's liability may still apply within the limits set by the applicable law in a particular jurisdiction. This clause is often used to resolve disputes or problems with decisions unilateral.⁵If examined in detail, the clause is included only to inform the parties involved that if the documents or information submitted are proven to be false, the parties involved will be responsible. However, the release clause is not well drafted in accordance with the Notary Law, so it does not provide a legal basis or legal protection to the Notary.

Based on our observations in Indonesia, the provisions that limit the authority to create an exoneration clause have not been explicitly regulated in the Law. The only provision is found in the Consumer Protection Law, with the term "standard clause" which has the nuance of an "exoneration clause. In general, several articles in the Civil Code can be pointed out. One of them is Article 1337 of the Civil Code which states that an agreement may not be made that is contrary to law, morality, or public order. However, in order to test the extent to which the agreement is contrary, it needs to be processed through a lawsuit in court.⁶If we analyze it in detail, then this verse can be used as a weapon by a notary if a legal entity requests information, and other people interpret it carefully on the basis of an act concluded to be true, so that it can be canceled by the notary. However, if the notary proven guilty, the notary must still bear all losses and be responsible according to the level of the violation he committed, because legally the notary remains responsible for the deeds he made until retirement. The law may impose limitations on the type and scope of the exoneration clause. Parties to the agreement should ensure that the clause complies with the applicable

⁵Justika Editorial. 2022. What is an Exoneration Clause in a Mandatory Contract to Understand (justika.com)<https://blog.justika.com/document-bisnis/apa-itu-klausula-eksonerasi/>. accessed February 29, 2024

⁶Lucky Omega Hasan. 2011. Exoneration Clause and the Principle of Balance in Standard Agreements.<https://law.uui.ac.id/wp-content/uploads/2013/01/FH-UII-KLAUSULA-EKSONERASI-DAN-ASAS-KESEIMBANGAN-DALAM-PERJANJI.pdf> accessed February 29, 2024

laws in a particular region or jurisdiction. Standard clauses are prohibited because one party wants to avoid responsibility for the contract that has been made. The prohibition on the inclusion of standard clauses is intended to place consumers on an equal footing with business actors based on the principle of freedom of contract which is one of the main principles in Indonesian contract law.

Let us recall Article 38 paragraph (3) of the UUJN which essentially explains that the contents of the law are only based on the interests of the parties and cannot be interfered with by third parties, including notaries. In addition to this article, reviewing Article 53 of the UUJN, it states that: "Notarial deeds may not contain stipulations or provisions that provide any rights and/or benefits for notaries...". It is important to note that the legal force of an exoneration clause in a deed of agreement made by a notary may vary based on the laws in force in a particular country or jurisdiction. Based on several provisions of this article, the author wishes to review the legality of the clause in a notarial deed by considering the applicable regulations.

2. Research Methods

This research method uses an empirical legal approach that is based on primary data (field research) where the data is used to identify problems that arise in relation to legal status of notarial deeds that include exoneration clauses. The specification of this research is descriptive analytical, namely research that only describes the overall condition of the research object by grouping, categorizing according to the research objectives to answer the problems in the research. Data sources and data collection methods use primary data obtained by direct interviews with sources who are considered to understand the research topic and secondary data obtained by reviewing literature related to the research topic. The data obtained are analyzed qualitatively, namely analysis in the form of sentences and coherent, orderly, logical descriptions so that a picture will be obtained to facilitate understanding of the analysis results.

3. Results and Discussion

3.1. Legal Status of Notarial Deeds Made by a Notary and Containing an Exoneration Clause

The certainty of the position of a Notary as an official is very important, because it is related to the legal product produced by the Notary himself, namely in the form of an authentic deed. In addition, it is also to realize the existence of legal certainty related to the position of the Notary as an Official. The need for law in society can be seen from the increasing number of forms of agreements stated in a Notarial deed, where the notary is a public official who is authorized to make authentic deeds and other authorities as referred to in the law. Notaries also play a role in providing legal advice in accordance with the problems that exist before the transaction occurs, whatever is advised is then stated in the relevant

deed, but still according to the wishes or statements of the parties concerned, not merely statements from the notary.

The notary's responsibility in UUJN is intended as the notary's obligation to legal provisions in carrying out his duties and obligations, in the sense that all notary's actions in carrying out his duties and obligations must be legally accountable, including all consequences for being subject to legal sanctions for violations of the underlying legal norms. Article 1337 of the Civil Code states that an agreement must not be made that is contrary to law, morality, or public order. However, in order to test the extent to which the agreement is contrary, it is necessary to process it through a lawsuit in court. Through this article, it can be stated that an agreement must be made based on principles that do not conflict with law, morality or public order.

According to the jurisprudence of the Supreme Court of Indonesia Number 702 K/Sip/1973, dated September 5, 1973, a notary is not obliged to seek material truth with what is stated by the party appearing because one of the duties of a notary is only to record what the parties want. According to the jurisprudence of the Supreme Court of Indonesia Number 702 K/Sip/1973, a notary must write down what the parties want through the deed he makes. This is in accordance with the principle that a notary acts as a neutral third party during the deed-making process. In reality, a notary still has an ethical and professional responsibility to ensure that the deed he makes meets the formal and legal requirements stipulated by law, even though they are not obliged to seek factual truth about what is said by the parties involved. Thus, a notary remains responsible for ensuring that the deed he makes is not wrong, even though the notary is not required to conduct a thorough investigation to ensure that every statement made by the parties involved is true.

An exoneration clause is a statement or provision in an agreement or legal document that aims to reduce or eliminate the responsibility or obligation of the parties involved in the agreement. In the context of a notarial deed, an exoneration clause can be used to reduce or eliminate the notary's responsibility for errors or negligence that may occur in the making of the deed.

Standard agreements containing an Exoneration Clause have the following characteristics:

1. In general, the content is determined by the party with the stronger position.
2. The weak party generally does not participate in determining the contents of the agreement, which is an accidental element of the agreement.
3. Driven by its needs, the weaker party is forced to accept the agreement.
4. The form is written
5. Prepared in advance in bulk or individually.

These characteristics can reflect economic principles and legal certainty. Looking at economic principles and legal certainty in standard agreements, it is seen from the interests of entrepreneurs, not from the interests of consumers. With these conditions, the economic interests of entrepreneurs are more secure because

consumers only agree with entrepreneurs on one side, basically only for their personal survival.

Exoneration clauses can minimize or even eliminate the responsibility of only one party. Exoneration clauses can come from the unilateral formulation of business actors and can also come from the formulation of Articles of the law. Exoneration clauses formulated by business actors burden consumers with proof and declare themselves innocent and this is what makes it difficult for consumers. Exoneration clauses formulated by law burden consumers with proof. Exoneration is usually found in a standard agreement that is unilateral. Thus, there are three possible exoneration clauses that can be formulated in the terms of the agreement, namely:

- a. Due to force majeure
- b. Losses arising from force majeure are not the responsibility of the parties, but in the terms of the agreement can be charged to the consumer, the business actor is exempted from responsibility.
- c. Exoneration due to business actor's mistake that harms the second party. Losses that arise due to business actor's mistake should be the responsibility of the business actor, therefore this can happen due to not properly or negligently carrying out obligations towards the second party.
- d. Exoneration due to business actor's mistake that harms third party Losses that arise due to business actor's mistake should be the responsibility of the business actor. However, in the terms of the agreement, the losses that arise are charged to the second party which turns out to be the burden of the third party.⁷

However, it is important to note that in some jurisdictions, the exoneration clause in a notarial deed may not apply or may only apply to a limited extent, depending on the laws and regulations in force in that country or region. For example, in some countries, there are legal provisions that prohibit or limit the use of exoneration clauses in notarial deeds, especially if the clause is contrary to applicable law or if it is contrary to the public interest or justice. In addition, in practice, the validity of an exoneration clause in a notarial deed can also be affected by factors such as deliberate notarial error, violation of the law, or very serious negligence.

Thus, although an exoneration clause may be recognized in a notarial deed, its enforceability may vary depending on various factors including applicable law and the specific circumstances of the case. It is advisable for parties involved in a legal transaction to always consult an advocate or legal expert to understand the legal implications of an exoneration clause and the rights and obligations involved. External evidentiary force requires the denying party to prove otherwise. Formal evidentiary force involves the truth of an event, while material evidentiary force relates to the content of the deed. If all these aspects are met,

⁷Artdityo, Achmad Busro, Anggita Doramia Lumbaraja. Journal: Legal Problems in Motor Vehicle Rental Agreements Related to the Exoneration Clause, (Semarang: Diponegoro University. 2019). Page 352

the deed has full evidentiary force. Although an exoneration clause is not explicitly regulated, a Notary may include it to limit his or her liability, provided that it is agreed by all parties involved.

The contents of the clauses in notarial deeds have caused pros and cons among academics and practitioners among researchers and legal practitioners regarding the authenticity of notarial deeds as authentic deeds. Let us recall Article 38 paragraph (3) of the UUJN which essentially explains that the contents of the law are only based on the interests of the parties and cannot be interfered with by third parties, including notaries. In addition to this article, reviewing Article 53 of the UUJN, it states that: "Notarial deeds may not contain stipulations or provisions that provide any rights and/or benefits to notaries...". It is important to note that the legal force of an exoneration clause in a deed of agreement made by a notary may vary based on the laws in force in a particular country or jurisdiction.

However, the legal status of notarial deeds that include exoneration clauses can raise several questions and controversies. Some people argue that the exoneration clause can threaten legal certainty and the integrity of the judicial system, because notaries have an important role in ensuring the validity of legal documents. In addition, the exoneration clause can also weaken the legal protection that should be given to parties who may be harmed due to the notary's error or negligence. Exoneration clauses can appear in various forms. First, the clause can be in the form of a complete release from responsibility in the event of a breach of promise (default). Second, it can be in the form of a limitation on the amount of compensation that can be claimed. Third, it can be in the form of a time limit for the injured party to file a lawsuit or claim for compensation. Finally, in terms of time limits, the time limit is often shorter than that stipulated by law to file a lawsuit or claim for compensation.⁸

To carry out their duties safely and professionally, Notaries adopt exoneration clauses. Apart from being a preventive measure, this clause also functions as a precautionary measure, legal protection, communication to other parties, and guidance for the parties involved. In carrying out his role as a public official, a Notary must comply with the provisions of the Notary Position Law and ensure that every authentic deed he makes meets the legal standards set. In the context of contract law, Notaries must also pay attention to principles such as freedom of contract, consensualism, good faith, trust, and *pacta sunt servanda* (the principle that agreements are binding).

The importance of the deed structure because non-compliance with statutory regulations can result in the deed not meeting the requirements as an authentic deed. Article 44 paragraph (1) states that after the deed is read, the person appearing, witnesses, and notary must sign it. The use of security clauses is also usually done with thumbprints to provide legal certainty because each individual's fingerprints are unique and difficult to deny.

⁸Sutan Remy Sjahdeini, *Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia*, Ctk I, Indonesian Bankers Institute, Jakarta, 1993, p76

Evaluation of deeds made by Notaries is based on the principle of presumption of validity, where the deed is considered valid unless proven otherwise. Notaries are also required to comply with the requirements and Code of Ethics of Notaries and to pay attention to the provisions of administrative, civil, and criminal law. Although not responsible for substantial truth, Notaries must still be careful in carrying out their duties.

3.2. Notary's Responsibility for Notarial Deeds Made by Notaries and Containing Exoneration Clauses

The legal act contained in a Notarial deed is not a legal act of a Notary, but rather a legal act containing the acts, agreements and determinations of the parties who request or want their legal acts to be contained in an authentic deed. The parties in the deed are the ones bound by the contents of an authentic deed. A Notary is not a deed maker or a person who has the job of making deeds, but a Notary in carrying out his/her duties is based on or equipped with various legal knowledge and other sciences that must be mastered in an integrated manner by a notary and a deed made before or by a Notary has the position of evidence.

The responsibility held by a Notary adheres to the principle of responsibility based on fault of liability. In making an authentic deed, a Notary must be responsible if there is an error or intentional violation by the Notary in the deed he makes.⁹The role of the notary is to reduce the existence of exoneration which always harms the weak. It requires the role of the state through Notary Officials so that the implementation of the principle of freedom of contract does not conflict with the meaning of the creation of that principle and so that ethics becomes the basis for implementing this principle.

Regarding carrying out his profession, a notary must also be responsible for himself and socially and both in terms of positive legal order and the notary code of ethics. The notary code of ethics applies to all members of the association and other people (as long as the person concerned carries out the office of a notary), both in carrying out the office and in everyday life. A notary before carrying out his/her position must be sworn in first. Several things are also the consequences of a notary in carrying out his/her position. This also confirms that the position as a notary must be independent, that is, not taking sides with the parties, so that the notary becomes a position of trust.

The consequences that arise for a notary as a public official who is given the authority to make authentic deeds, then the notary must be responsible and if there is a violation or deviation from the requirements for making the deed he makes, this will result in the notary making the deed made by the notary being invalid.¹⁰Mistakes or violations committed by a notary cannot be directly held accountable, the notary only records what the parties want which is then written

⁹Andi Mamminanga, Thesis: Implementation of the Authority of the Regional Notary Supervisory Board in the Implementation of Notary Duties based on UUJN. Faculty of Law, Gajah Mada University, Yogyakarta, 2008

¹⁰Sjaifurrachman and Habib Adjie, Aspects of Notary's Responsibility in Making Deeds, Bandung: CV. Mandar Maju, 2011. Page 17

into the deed. If there is any information that is not true or false that is conveyed by the parties, it is the responsibility of the parties themselves. The notary only pours the agreement into the form of an authentic deed so that in this case the notary is only responsible for the formal form of the authentic deed as stipulated by law.

The notary is responsible for what is witnessed, seen, heard and also done by the notary himself as a public official. Problems that can occur in a Notarial deed, for example, the deed contains false information, fake documents or fake identities provided by the person appearing to make an authentic deed. Problems such as those above for a notary are actually separate from the responsibility for material proof of what is provided by the person appearing, the Notary is only fully responsible for the deed he has made, because in Article 15 paragraph 1 of Law Number 2 of 2014 concerning the Position of Notary stipulates that the Notary is only authorized to make an authentic deed based on matters desired by the person appearing to be stated in the authentic deed. An authentic deed as a perfect evidence means that the truth stated in the notarial deed does not need to be proven with the help of other evidence. However, an authentic deed does not provide perfect evidence of what is contained in it as a mere statement, unless what is stated has a direct relationship with the main contents of the deed.¹¹

An exoneration clause is a provision in an agreement or contract that aims to limit or even eliminate the responsibility of one party in the implementation of the contract. In other words, this clause tries to free a certain party from responsibility for losses or violations that may occur in the implementation of the contract. However, on the other hand, there is also a view that an exoneration clause is a legitimate part of the freedom of contract between the parties involved. As long as the clause is accompanied by transparency and mutual agreement, it is legally valid. The application of the word (exoneration) is a form of urgent words in the sense that it is needed by a notary to protect himself in carrying out his duties. In addition to being a form of protecting the notary, there are other grounds for notaries to include the clause, namely:

- a. As a form of caution and prudence for notaries
- b. As a form of legal protection that can be carried out by the Notary himself.
- c. For the information of other parties, do not be too quick to stigmatize/label the notary from another party as the party that must be fully responsible, if there is no strong evidence.
- d. As a way to educate the people who are facing the issue, if they lie then the people who are facing the issue themselves must be held responsible.

If the notary has provided good legal advice, their chances of being sued in a civil court are reduced. Because the notary does not carry out the duties stipulated by the Notary Law and there are parties who feel aggrieved by the rights they previously had, the notary can be sued to provide compensation for unlawful

¹¹Widhi Handoko, State Domination of the Notary Profession Between Ideas and Reality. PT Roda Publika Kreasi, 2019.pg. 111

acts, because the notary does not carry out his obligations stipulated by the Notary Law and there are parties who feel aggrieved by their rights which were previously not given any explanation by the notary. It is stated that the role of the notary can provide guidance and provide services in a balanced manner.¹²

Regarding the validity of the act, the contents of the clause do not override the validity of the act, if at the time the clause was written it was done with the knowledge of the parties and based on the statements of others, as is. His authority and that the evidence provided is true, then it is sufficient for the Notary to confirm other matters transferred to the Notarial deed. It can be said that what happens in this case also depends on the interests of the other parties involved. In practice, the legal responsibility of a notarial deed containing an exoneration clause will depend greatly on the specific context of the legal transaction, as well as the interpretation of the law by the relevant court or legal institution. Therefore, it is important for a notary to carry out his duties carefully and understand the legal implications of each clause included in the notarial deed.

Notaries may not refuse to provide their services, unless there is a valid reason and if there is a violation or forgery, the Notary may face administrative, civil and criminal sanctions. The application of Article 51 of Law No. 2 of 2014 is difficult if the parties involved are not present before the notary, are difficult to contact, or refuse to meet due to a dispute. Notaries must comply with the principle of prudence and not exceed their authority. Notaries are responsible for mistakes made in making authentic deeds, but are not responsible for the substance of the information from the parties involved. Mistakes made by the parties involved are not the responsibility of the Notary. Notary mistakes can result in administrative and civil liability, including sanctions such as reprimands, temporary suspensions, or dishonorable discharges.

If there is a report on a notarial deed, the notary must prepare himself for further examination by the Regional Supervisory Board. We must first see what the mistake was because not every mistake is necessarily the notary's fault. Everything must be proven first, we cannot immediately judge before being declared guilty. So it must be seen case by case, there must be proof.

Notaries can actually free themselves from responsibility and lawsuits that will be faced due to the deeds they make being legally defective. Deeds are legally defective due to errors by other parties, or information and evidence submitted by the client in making the deed are supported by documents that appear to be original but are in fact fake. Another thing related to forgery in notaries is that there are parties who appear not in accordance with the documents submitted, this also causes the notarial deed to be legally defective.

Compensation for unlawful acts in civil law is regulated by Article 1365 of the Civil Code with elements of unlawful acts, errors, losses, and causal relationships. According to Article 1865 of the Civil Code, the party whose rights are violated must prove the unlawful act. A claim for damages is successful if all elements are

¹²Ibid. I Made Sarjana. Page 123

met. Article 1246 of the Civil Code stipulates the costs, losses, and interest that can be claimed by the creditor. The claim for damages does not have to be fulfilled in full, it is sufficient with the actual losses experienced. There are no direct criminal sanctions against Notaries in the UUJN, but criminal violations can be prosecuted through the Criminal Code if the Notary and the parties involved are aware and planned, or if the making of the deed is not in accordance with the UUJN and is assessed by the Notary Supervisory Board.¹³

Article 53 prohibits Notaries from including provisions that benefit themselves or their families. The exoneration clause does not provide legal immunity, it only emphasizes the limits of responsibility. Although not specifically regulated, the use of the exoneration clause does not harm the Notary or reduce legal certainty, responsibility towards the Notary cannot be implemented due to the absence of legal certainty governing the use of the exoneration clause which is included by the Notary to protect himself, that legal responsibility towards the Notary does not apply because in the case that the author raised there is no legal certainty governing, as the theory of responsibility put forward by Hans Kelsen who classifies responsibility into several parts, namely:

1. Individual responsibility means that an individual is responsible for the violations he/she commits.
2. Collective liability means that an individual is responsible for an offense committed by others.
3. Liability based on fault means that an individual is responsible for violations that he/she commits intentionally and with the intention of causing harm;
4. Strict liability means that an individual is responsible for a violation which means that an individual is responsible for a violation he/she commits because it is unintentional and unforeseen.

An exoneration agreement can relieve a person of responsibility for legal consequences that occur due to a lack of implementation of obligations required by law, including regarding the issue of compensation in the event of a broken promise. In order to reduce the existence of exoneration which always harms the weak, the role of the state through Notary Officials is needed so that the implementation of the principle of freedom of contract does not conflict with the meaning of the creation of that principle and so that ethics becomes the basis for implementing the principle of freedom of contract.

Overall, in this case it has been explained that it is important to understand, observe, and evaluate the legal certainty related to authentic deeds involving notaries and including exoneration clauses. Top of Form Basically, the exoneration clause is valid or may be used as long as there is no transfer of responsibility in accordance with the provisions of the Consumer Protection Law and it is necessary to differentiate in this case from the exoneration clause in the Consumer Protection Law which cannot be equated with the exoneration clause

¹³Agung Prianto, Anriz Nazaruddin Halim, Yudha Cahya Kumala. Journal: Legal Certainty of the Power of Authentic Deeds Against Applicants Containing Exoneration Clauses Associated with Notary Responsibilities. (Jakarta: Jayabaya University). 2024. Page 1194.

in the Notarial deed, because what is in the Notarial deed contains a statement from the parties and there is no coercion from the Notary against it and must be distinguished from the responsibility carried out due to the Notary's own mistake in making the Notarial deed and the mistakes made by the parties.¹⁴

The authority of a notary is based on Law No. 2/2014, not on considerations such as considering a notary as a party involved or as the power of attorney of the parties. Basically, an exoneration clause can be used without transfer of responsibility in accordance with the consumer protection law. The exoneration clause in consumer protection cannot be equated with the exoneration clause in a notary because the former is a statement of the parties. An example of an exoneration clause in a notary is that the parties have understood, known the contents of the deed made truly and at the will or request of the parties themselves that have been agreed upon, it could also be that the parties guarantee the authenticity of the data shown to the notary, that the parties guarantee that they really have the authority related to the making of the object of the deed and various others depending on the notary so that there is indeed no standard format in the exoneration clause itself.¹⁵

The importance of legal protection for notaries is to maintain the dignity and honor of their position, including when giving testimony and taking part in examinations and trials, keeping the information in the deed confidential in order to protect the interests of the parties involved in the deed, and maintaining the minutes or letters attached to the minutes of the deed, as well as the notary protocol in storing them. There is no clear and comprehensive law in Indonesia that protects notaries when carrying out their duties. However, by knowing the development of existing laws, notaries will be more careful in carrying out their duties so that they are not easily fooled by bad witnesses. Regarding understanding the relevant and relevant laws on notary, errors in making deeds will be minimized. Deeds made by notaries will be considered authentic and can be defended in and out of court.¹⁶

4. Conclusion

The inclusion of an exoneration clause in a deed made before a Notary does not significantly affect the legal standing of the Notary, except in special deeds made by him. However, if the Notary chooses to still include an exoneration clause in the deed, it is not wrong and does not make the Notary vulnerable or weak. That the Notary's responsibility is limited to the formal truth in an authentic deed made by him. The Notary has no responsibility to assess the material truth of the

¹⁴Ibid. 1198

¹⁵Habib Adjie,, Nynda Fatmawati Octarina, Muhammad Hasan. Journal: Urgency of Implementing Exoneration Clauses in Legal Products Made by Notaries.

¹⁶Innaka Dewi Indra. Thesis. 2019. Application of the Principle of Presumption of Validity to Notarial Deeds with Fake Figures (Case Study of Banda Aceh High Court Decision Number 43/Pdt/2017/Pt.Bna).

information he obtains from the parties. The responsibility of a Notary is based on the authority, substance and procedure for making the deed made by him.

5. References

- Agung Prianto, Anriz Nazaruddin Halim, Yudha Cahya Kumala. Journal: Legal Certainty of the Power of Authentic Deeds Against Applicants Containing Exoneration Clauses Associated with Notary Responsibilities. (Jakarta: Jayabaya University). 2024.
- Andi Mamminanga, Thesis: Implementation of the Authority of the Regional Notary Supervisory Board in the Implementation of Notary Duties based on UUJN. Faculty of Law, Gajah Mada University, Yogyakarta, 2008
- Artdityo, Achmad Busro, Anggita Doramia Lumbanraja. Journal: Legal Problems in Motor Vehicle Rental Agreements Related to the Exoneration Clause, (Semarang: Diponegoro University. 2019). Page 352
- GHS Lumban Tobing, Notary Regulations, Erlangga, Jakarta, 1999.
- Habib Adjie,, Nynda Fatmawati Octarina, Muhammad Hasan. Journal: Urgency of Implementing Exoneration Clauses in Legal Products Made by Notaries.
- I Made Sarjana. Notary Journal: Limitation of Exoneration Clauses, (Bali: Udayana University. 2016).
- Innaka Dewi Indra. Thesis. 2019. Application of the Principle of Presumption of Validity to Notarial Deeds with Fake Figures (Case Study of Banda Aceh High Court Decision Number 43/Pdt/2017/Pt.Bna).
- Justika Editorial. 2022. What is an Exoneration Clause in a Mandatory Contract to Understand (justika.com)<https://blog.justika.com/document-bisnis/apa-itu-klausula-eksonerasi/>. accessed February 29, 2024
- Lucky Omega Hasan. 2011. Exoneration Clause and the Principle of Balance in Standard Agreements.<https://law.uui.ac.id/wp-content/uploads/2013/01/FH-UII-KLAUSULA-EKSONERASI-DAN-ASAS-KESEIMBANGAN-DALAM-PERJANJI.pdf> accessed February 29, 2024
- Sjaifurrachman and Habib Adjie, Aspects of Notary's Accountability in Making Deeds, Bandung: CV. Mandar Maju, 2011.
- Sutan Remy Sjahdeini, Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia, Ctk I, Indonesian Bankers Institute, Jakarta, 1993.
- Sutan Remy Sjahdeini, Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia, Ctk I, Indonesian Bankers Institute, Jakarta, 1993.
- Widhi Handoko, State Domination of the Notary Profession Between Ideas and Reality. PT Roda Publika Kreasi, 2019.
- Widhi Handoko, State Domination of the Notary Profession Between Ideas and Reality. PT Roda Publika Kreasi, 2019
- Zakiyah. Journal: Exoneration Clause in the Perspective of Consumer Protection. (Banjarasin: Lambung Mangkurat University), 2018.