

Liability and Completion Law on Notary Deed

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Abstract. *Issues raised in this study first, how a form of accountability notary who has ended his tenure on the deed he made before the end of his tenure? Second, how the legal protection of a notary who has ended his tenure on the deed made before nursing. This study analyzed qualitatively in the form of research reports, descriptive and approach of this research is the approach of legislation and case-based approach to the type of juridical empirical research. From the analysis of the study concluded that the first form of responsibility notary who has ended his tenure against the violation of the law office of a notary, may be accounted for either administrative, civil and criminal as well as a variety of sanctions. Second,*

Keywords: Liability; Completion; Deed.

1. Introduction

Position a field of work or tasks carried out by someone to do his job as well as positions are arranged in a regulation regarding the employment field. A notary office of trust as well as one of the legal profession in charge of providing services and creating certainty and legal protection to the public by way of an authentic deed in a legal act perform legalization and *Warmerking* to letters under the hand. Authentic deed of Notary is a perfect evidence for the parties to carry out certain legal actions that includes the rights and obligations of the parties are clearly described in the Notary deed authentic.¹

Notary Deed which is an authentic deed has three (3) function to the parties that made it are:²

- a. As evidence that the parties concerned have held a certain agreement;
- b. As a testament to the parties that what is written in the agreement is the goal and desire of the parties;

¹ Azed, Abdul Bari. (2005). *Profesi Notaris sebagai Profesi Mulia*. Jakarta : Media Ilmu.p.68

² Salim HS. (2006). *Hukum Kontrak-Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika.p. 43

- c. As a proof to third parties that on a certain date unless specified otherwise the parties have entered into an agreement and that the agreement is in accordance with the will of the parties.

Notary authority and obligation are set out in Article 15 paragraph (2) until the letter e UUJNP:

- a. Certify the signatures and set a firm date in the letter under the hand by enrolling in special books;
- b. Posted a letter under the hand by enrolling in special books;
- c. Make a copy of the original letter under the hand in the form of copy that contains a description as written and illustrated in the letter in question;
- d. Approve their compatibility with a photocopy of the original letter;
- e. Provide legal counseling in connection with the deed.

Article 16 paragraph (1) letter a mention that a notary public in the running position, the notary shall act trustworthy, honest, thorough, independent, impartial and safeguard the interests of those involved in the legal action. In addition, a notary in making authentic act should contain some elements such as the element of clarity, an element of truth, the element of completeness and validity elements.

To determine until when the Notary, the Notary substitute, substitute Notary special, and while officials should be responsible for the Notary deed made before or created by him, it must be associated with the concept of the Notary as a public office. Everyone who carry or hold certain positions in any field as the implementation of a structure of the State, government or organization has a limit. There are limitations in terms of authority and there are also limitations in terms of time, that is to say until when positions are carried or lap one must come to an end. Especially for Notaries, Notary substitute, substitute Notary special and temporary officials accountable Notaries have a limit in accordance with the domicile and office area and also in terms of authority.³ Although the protocol notaries who have retired already Notary diahlihan to another but the responsibility for the Notary protocols remain on the Notary who has retired.⁴

Based on the presentation there is the question that is how the responsibilities of a nursing Notary who has ended his tenure when the deed made his presence resulted null and void after the end of the tenure of the notary and how the legal settlement of a notary top nursing deed made in his tenure.

2. Research Methods

This type of research is normative. Techniques and data collection in this study conducted by the research literature (Library Research). Data collection tool used is the study of documents to obtain secondary data, by reading, studying, researching, identifying, and analyzing primary data, secondary and tertiary related to this research.

³Effendie, Herlina. *Notaris Sebagai Pejabat Publik Dan Profesi*. Jakarta: Pustaka Ilmu.p. 50

⁴Saputro, Anke Dwi. (2010). *Jati Diri Notaris Indonesia Dulu, Sekarang, dan di Masa Datang*. Jakarta: PT. Gramedia Pustaka. p. 40

3. Results and Discussion

3.1. Accountability Notary who has ended his tenure on the deed he made

The responsibility of notaries in their duties towards malfeasance notary along with a variety of administrative sanctions such as accountability, civil, and criminal. Sanctions are punitive measures to force individuals fulfill the agreement or comply with the provisions of law.⁵ Every rule of law, there is always the accompanying sanctions at the end of these laws. The law gives the burden of responsibility for the act of doing it does not mean any loss suffered by the parties entirely the responsibility of the Notary. Law itself gives the limits of the responsibilities of the Notary so that not all the losses charged to the Notary. Regarding the conditions governing the liability limit Notary can be seen in Article 65 UUJN that a Notary Public, Substitute Notary, Special Substitute Notary and Acting Notary in charge of each deed made though Notaries protocol has been assigned or transferred to the storage protocol Notary.⁶

At least the responsibility notary is divided into three major domains namely:

3.1.1. administrative responsibility

The responsibility of the administration notary can be regulated in detail in UUJN. Notary assigned and responsible to register and certify (*Waarmerken* and legalization) letters/deed made under the hand. Notary public accountability the administration can be held by institutions/organizations notary, in contrast to criminal and civil liability should be done through the courts. Nevertheless, the court through a verdict can forward it to the notary organizations to follow the decision that has been issued by the court. Determining the presence of a notary public administration responsibility that should their actions are punishable notary or actions that have violated the elements expressly set forth in UUJN.

Demand accountability notary, carried out by dropping or provide a notary in the form of administrative sanctions for the breach accountable. Administrative sanctions for notary regulated in UUJN has been determined as follows⁷:

- a. verbal reprimand;
- b. Written warning;
- c. Suspension;
- d. Termination with respect;

⁵Ministry of National Education. (2008). *Kamus Besar Bahasa Indonesia*. Jakarta: Gramedia Pustaka Utama. p. 1224.

⁶ Pitlo in M. Isa Arief. (1986). *Pembuktian dan Daluarsa Menurut Kitab UndangUndang Hukum Perdata Belanda*, Jakarta: PT. Intermedia. p 51.

⁷ Arrohim, Mohammad B., & Wahyuningsih, Sri Endah. (2020). Analysis of Judicial Application of Criminal Penalty Against Notary/Land Deed Officials Conducting Making Crime of the Fake Authentic Deed in State Court of Semarang. *JURNAL AKTA*: Vol.7, No. 2, 183-188. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7891>

e. Discharge of disrespect.

In addition to asking the administration of legal liability for violating UUJN notary, Notary Supervisory Council should implement the mandate UUJN with the aim that the notary did not repeat his actions. Coaching is an act, process, outcomes or statements to get better, the coaching show their progress, improvement, change, evolution on sharing possibilities, developing, or peningkataan on something.⁸

Notary personally made a mistake in making authentic deed which is not in accordance with the provisions stipulated in the UUJN No. 30 of 2004 Jo UUJN No. 2 2014 resulting in losses to the parties on the deed the Notary may be sued to court to pay damages and interest charges against the Notary.

3.1.2. *Give rise to civil liability*

Give rise to civil liability Notary is set in Civil Law as an act against the law arising from the laws and treaties. The model therefore legal liability arising from an act against the law according to the Civil Code are:

- a. Responsibility with elements of fault (intentional and negligence), as contained in Article 1365 of the Civil Code.
- b. Responsibility with error element, in particular an element of negligence, as contained in Article 1366 of the Civil Code;
- c. Absolute Responsibility (without an error) in a very limited sense found in Article 1367 of the Civil Code.

There are also civil sanctions that must be accepted if there are errors that occur as a result of default or act against the law *onrechtmatige daad* which can be a reimbursement, compensation and interest. Penalties can be imposed to the notary who received a lawsuit from the client feel aggrieved that the deed has the strength of evidence as a deed under hand or void by law as a result of the deed in question was defective.

Article 1869 of the Civil Code to the limits of a notarial deed that is as strong as the deed under the hand can occur if it is not complied with:

- a. Not competent authorities concerned
- b. Does not have public officials concerned
- c. A defect in shape

If there are those who feel aggrieved of the deed made by the notary, it can be directly filed civil case against the notary on the deed made. Demand reimbursement of expenses, damages and interest to the notary, not based on evidence that changing positions for violating certain provisions of the UUJN, but based on the legal

⁸ Thoha, Miftah. (1999). *Manajemen Kepegawaian Sipil di Indonesia*. Jakarta: Kencana Press. p. 7

relationship that occurs between the notary and the parties facing the notary. Even the retired notary, the notary will still be responsible civilly against the deed ever made.

In practice, the notary often seated as a defendant by the other party, because he felt that the legal action mentioned in the deed that categorized as an act against the law together with others who are also mentioned in the deed. In accordance with the construction law notary position in Indonesia, the Notary not as a party to the deed, and the Notary only formulated what became wanting the parties so that his action is poured into the form of an authentic deed, the deed made by and before a notary. Very difficult to be accepted by logic based on construction law like it to be used as a defendant deed made before a notary. Notary has authority to carry out his duties during that authority attached to him. Limits of liability notary is over/along notary has authority. Notaries who are on leave, after-service and who have been dismissed can not be held more accountable, because there is no longer on his authority.⁹

3.1.3. *Accountability In Crime*

If there is a notarial deed in question by the parties or other parties too often notary withdrawn as a party to participate in performing or helping commit a crime by giving false information poured into a notarial deed. If convicted of mistake or blunder by participating of false information along one side, then it is obligatory for him to be given sanctions.

In section 66 UUJN to request for information notary statements of certain parties who want to call the agency shall request approval Honorary Council of Notaries such institutions the police, judiciary, or Judge.¹⁰ The provisions of Article 66 UUJN is imperative for the police, prosecutors, or judge, which means that if the police, prosecutors, and Judge underestimate the provisions of Article 66 UUJN it can be categorized as a violation of the law. When one is not allowed to be called, then the Police or the Attorney will call witnesses that the notary deed at the end of the deed. This is actually not in accordance with the applicable law notaries, because the witness was included in the formal aspects of notaries who are an integral part of the notarial deed itself.

To determine a notary to criminal liability, the notary deed should have been fulfilled three following conditions:

- a. There must be a notary deed that can be punished for violating the elements in the making of an authentic act which expressly defined by statute.
- b. The notary acts contrary to the law, and the act was carried out with an error (whether it is the element of intent or negligence) of the notary.

⁹ Adjie, Habib. (2007). *Hukum Notaris Indonesia, Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Notaris*. Surabaya: Refika Aditama. p. 23.

¹⁰*Ibid.* p. 24.

- c. Errors or omissions in offenses include elements that are against the law and there should be a criminal act against the law.

The imposition of criminal sanctions against the notary to do all these restrictions are violated. This means that in addition to meeting the breach within UUJN formulation must also satisfy the formula in the Criminal Code. However, if the Court of notary proved intentionally or unintentionally, together with the parties client a deed with the intent and purpose to benefit the parties or client particular, and then detrimental to the other, then to him shall be sentenced according to the provisions governing the.¹¹

3.2. Deadline accountability to the Notary deed made during his tenure has ended

To remain grounded in the rule of law or procedure or procedures deed and rules of law relating to the relevant legal action as outlined in the deed. The role of the notary in this case also to give legal advice in accordance with the existing problems, regardless of the legal advice given to the parties and then incorporated into the deed in question remain as wishes or statements of the parties concerned, and not as a statement or statements notary,¹²

Provisions on the deadline notary can be sued for breach of the injured party in the manufacture of authentic deed should be based on the provisions expired.

In the book All 4 BW know understanding expired, among others:¹³

- a. Which causes a person released from an obligation or right to require that cause a person to be killed, *praescriptio* (Latin) and *extinctieve verjaring* (Dutch)
- b. Which causes a person to acquire a specific right. The expiry date requires the good faith of the person who will acquire these rights, *usucapio* (Latin) and *acquistieve verjaring* (Dutch).

Shaper for in Article 78 of the Criminal Code specifies that the right to sue a person who committed the crime, died by the expiration date (*verjaring*) after in past time as follows:

- a. One year for all the violations and the crimes, committed by means of printing (*drukpers*);
- b. Six years for a crime that is punishable by a fine, imprisonment, and imprisonment for a maximum of not more than three years;

¹¹ Darus, M. Luthfan Hadi. (2017). *Hukum Notariat dan Tanggungjawab Jabatan Notaris*. Yogyakarta: UII Press. p. 92.

¹² Adjie, Habieb. Op.Cit. p.23

¹³ Sutantio, Retnowulan & Iskandar Oeripkartawinata. (2005). *Hukum Acara Perdata dalam Teori dan Praktek*. Bandung: Mandar Maju. p. 205.

- c. Twelve years for all crimes punishable by a maximum prison term of more than three years;
- d. Eighteen years for all crimes punishable by death or life imprisonment.

In a 1967 article BW for which expired in civil law for thirty years, and Article 78 in conjunction with 79 of the Criminal Code in criminal law that is twelve years old. The parties can hold against the deed defective notary juridical until the deadline or expired runs though the notary concerned has retired or resigned as a notary. But after the expiration of expired, the parties can no longer hold the notary.

UUJN Article 65 states:

"Notary, Substitute Notary, Special Substitute Notary, and Acting responsible for every deed he made even though protocol notary are assigned or transferred to the storage protocol".

If the skimming of article 65 UUJN, raises questions and concerns until when the time limit liability Notary, Substitute Notary, Special Substitute Notary, and Acting Notary on every deed made before or him? For answers to these questions are temporary until the notary died. Does such a time limit UUJN responsibilities under Article 65 because the article was not clear so we need interpretation.¹⁴

When the content of Article 65 UUJN applied as is, meaning no or without a time limit of liability, will cause some problems, among other things, what if the notary is still alive, but has been out of office or have died, or notary to move the position to be or served as the notary holding other positions not as a notary, and the deed then questioned people or certain parties subsequently submitted to the authorities (police, prosecutor, or the court), whether the authorities need to ask permission from supervisory board area (MPD) in accordance with Article 66 UUJN? or will the police, the prosecutor or the court summon or bring former notary wherever located.

Each office has a time limitation any accountability, which is served by all concerned because if someone's lap positions have been exhausted, concerned stopped anyway accountability in office ever on his lap. Especially for notaries, notary substitute, substitute notary particular, and acting notary that have a limit liability in accordance with the domicile and office area. For example, if a notary move the domicile and office area or notary substitute, substitute notary particular, and acting notary will then be held responsible according to the domicile and office area.

Notary has limitations in terms of authority is set out in Article 15 UUJN, which notaries have time constraints in carrying out his duties. And for a substitute notary otherwise served as Substitute notary deed again and not make anymore, then do not assume any responsibility, also apply to officials provisory Special Substitute Notary and Notary. Even when the protocol was submitted to the notary public notary

¹⁴ Suwindarsih, www.google.com UUJN controversial articles, accessed on February 17, 2010.

protocol holder or holders of the protocol submitted to notary or assemblies stored local supervisor, (Article 70 letters e and f UUJN).

But in practice that occurs in the community because of the sound of article 65 UUJN not clear, then the notary assessed should be responsible up to the last breath against the deed that has been made, which means that even though Notaries has been out of office should be responsible for the deed-the deed. When it should be if there are parties who consider that the notary deed false or incorrect, then that party should be able to prove the accusation or judgment through a civil lawsuit (legal process) and not by the notary complained to the police.

The Regional Supervisory Council if it receives complaints or reports from the public against someone who does not officiate; again as a notary who allegedly violated the deed UUJN he made during his notary, it must be rejected by the panel of examiners local notary. Because reported no longer serves as a Notary.

4. Closing

Notary as public officials in carrying out their duties has responsibilities that emotion filled and executed as well as possible so that in the conduct of his profession can do the job tersebut notary deed is good and right. Deadline Notary Public accountability is for all the duties of office, until Notary retire having reached the age of 65 years or 67 years, or retired at his own request because of certain reasons. For Substitute Notary, if it does not act as a Substitute Notary again and not make the deed again, then the Substitute Notary no responsibility whatsoever, nor for Acting Notary Public and Substitute Notary Special after not making the deed again no responsibility whatsoever for the deed made before or by him.

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