

Legal Liability on Notary Negligence in Electronic Registration of Fiduciary Guarantee

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Abstract. *This study aims to analyze and be able to find out about legal liability for notary negligence in registering fiduciary guarantees electronically. In the registration of online fiduciary guarantees, there is a big responsibility on the Notary because after completing filling in the data to continue the next access, the Notary is asked to approve in advance the statement that all data contained in the form is correct by marking the statement. The type of data in this legal research uses primary legal materials and secondary legal materials, as well as tertiary legal materials. Based on the results of research and discussion, Notaries in carrying out their duties, especially those related to making certificates, must be professional in accordance with applicable rules and notaries must be able to minimize mistakes at work due to the notary's carelessness can be called a practice mall and can be sued by the client as the responsibility of a profession carried by a notary.*

Keywords: *Fiduciary; Guarantee; Liability; Notary.*

1. Introduction

The financial institution requires a notary in binding fiduciary guarantees and in registering the object of collateral that is used as debt guarantee at the financing institution. The fiduciary guarantee must be registered electronically in the fiduciary guarantee registration administration system in accordance with Article 11 paragraph (1) UUJF. The registration must be submitted within a period of 30 days, starting from the date of making a fiduciary certificate as stipulated in Article 4 of the Government Regulation of the Republic of Indonesia Number 21 of 2015 concerning Procedures for Fiduciary Registration and Fees for Making a Fiduciary Guarantee Deed. However, in practice there is still an inaccuracy in the time of the notary in the registration of the fiduciary guarantee.

The implementation of the fiduciary system must be in accordance with procedures. The procedure in question is to register with the fiduciary registration office, this is done so that creditors (financing institutions) have legal power when carrying out executions of objects that are guaranteed. However, the reality on the ground is that there are not a few finance institutions that do not carry out this procedure, do not register collateral items with the fiduciary guarantee registration office, as a result, an application can occur to the court through a bailiff to carry out an execution or auction.

Considering how important fiduciary registration is so that if a fiduciary is not registered by an authorized official, it is felt in practice as a weakness and weakness for fiduciary legal institutions. This is because in addition to creating legal uncertainty, not carrying out the fiduciary registration causes the fiduciary guarantee to not meet the elements of publicity so that it is difficult to control. This condition can lead to things that are not healthy in practice, such as the existence of a fiduciary twice without the knowledge of the creditor.¹ Considering how important the fiduciary registration function is for a debt guarantee, UUJF regulates it and requires every fiduciary guarantee to be registered with the authorized official.

Based on the Circular of the Director General of AHU No. AHU.06.OT.03.01 of 2013 concerning the Implementation of the Electronic Fiduciary Guarantee Administration System with the aim of improving legal services for registration of fiduciary guarantees to the public easily, quickly, cheaply and conveniently.²

The cause of giving credit with a fiduciary guarantee is on the basis of trust, so in granting credit with a fiduciary guarantee must first pass a business feasibility analysis test from prospective customers of finance institutions prior to execution of the fiduciary guarantee object.

Based on the description above, this research aims to find out and analyze legal liability for the negligence of a notary in registering fiduciary guarantees electronically on behalf of the financing company PT. Wahana Ottomitra Multiartha Tbk (WOM Finance) Brebes. According to the author, it is very important to identify problems in research or scientific work so that the authors know the problems that must be studied and discussed.

¹ Ngadenan, Eksekusi Hak Tanggungan Sebagai Konsekuensi Jaminan Kredit Untuk Perlindungan Hukum Bagi Kepentingan Kreditur Di Mungkid, *Jurnal Law Reform*, Vol 5 No. 1 April 2010

² Ni Wayan Erna Sari, Pendaftaran Fidusia Online Pada Kantor Wilayah Kementerian Hukum dan Ham Provinsi Bali, *Jurnal Fakultas Hukum Universitas Udayana*, Volume VI, no. 4, 2018., p. 2.

2. Research Methods

The research method consists of Sociological Juridical Approach. The research specifications used are descriptive analytical. The data collected in this study consists of primary data so that it is carried out by interviewing the relevant agencies with legal responsibility for notary negligence in registering fiduciary guarantees electronically representing finance companies. The data analysis used in this research is qualitative. The types and sources of data used in this study are secondary data, legal materials used, primary legal materials, secondary legal materials and tertiary legal materials.

3. Results and Discussion

This research was conducted at the office of Notary Soleh, SH, M.Kn which is located at Sangkalputung, Brebes, Kec. Brebes, Kab. Brebes, explained that in making a fiduciary guarantee agreement, it must be registered according to the applicable law. Registration of fiduciary guarantees to provide legal certainty for parties entering into credit agreements.

The process of registering a fiduciary guarantee deed is regulated in articles 11 to 18 of Act No. 42 of 1999 concerning Fiduciary Guarantees and Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Security Deeds. The Government Regulation consists of 4 chapters and 14 articles. The matters regulated in government regulations include fiduciary registration, procedures for certificate repair, certificate changes, registration deletion, and certificate replacement.³

Article 1 point 2 of Act No. 42 of 1999 concerning Fiduciary Guarantees states;

Fiduciary Security is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Act No. 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.”

Based on the provisions that efforts to grant fiduciary rights to creditors with the intent and purpose, namely:

- As collateral, it refers to the general characteristics of collateral rights that the transfer of property rights to an object is only intended as

³ Anang Ade Irawan, Pertanggungjawaban Ahli Waris Notaris sebagai Pejabat Umum atas Akta Notaris yang Menimbulkan Kerugian Para Pihak, *Jurnal Lentera Hukum*, Volume 5 Issue 2 2018

collateral.

- The element of interest in paying off certain debts is to ensure that the debtor fulfills his obligations.
- Giving priority to the fiduciary recipient to other creditors from the settlement/obligation of the debtor (fiduciary guarantee provider).

Article 27 of Act No. 42 of 1999 concerning Fiduciary Guarantees states;

- Fiduciary recipients have priority rights over other creditors
- The priority right as referred to in paragraph (1) is the right of the Fiduciary Recipient to take the settlement of his receivables on the results of the execution of the Object that is the object of the Fiduciary guarantee.
- Priority rights of the Fiduciary Recipient are not nullified due to bankruptcy and or liquidation of the Fiduciary Giver

Fiduciary guarantee is a follow-up agreement from a main agreement. To guarantee legal certainty, the imposition of objects with fiduciary guarantees is made with a notarial deed in Indonesian and is a fiduciary guarantee deed. The obligation to make a fiduciary guarantee agreement in the form of a notarial deed by legislation is in the context of creating certainty, order and legal protection.

Article 5 paragraph (2) of Act No. 42 of 1999 concerning Fiduciary Guarantees states;

"The fiduciary guarantee certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force"

To obtain a Fiduciary Guarantee Certificate, "Objects that are burdened with fiduciary guarantees must be registered (Article 11 paragraph (1))." The recipient of the fiduciary guarantee or his proxies performs "Registration of Fiduciary Guarantees as referred to in Article 11 paragraph (1) which is carried out at the Guarantee Registration Office. Fiduciary (Article 12 paragraph (1) and "The Fiduciary Registration Office issues and submits to the Fiduciary Recipient a Fiduciary Guarantee Certificate on the same date as the date of receipt of the registration application" (Article 14 paragraph (1)).

The characteristics of a fiduciary guarantee are to provide material rights, give priority rights to creditors, allow the fiduciary guarantee provider to continue to

control the object of the debt guarantee, provide legal certainty and be easy to execute.⁴the characteristics of fiduciary law:

- Fiduciary is Material
- Fiduciary is Accessoir Hak
- Fiduciary is a Right of Preference
- Execution Parate

Objects that become the object of a fiduciary guarantee are objects that can be owned and their ownership rights transferred, both tangible and intangible, registered or unregistered, movable or immovable objects that cannot be encumbered with mortgage rights.

In the process of creating a fiduciary guarantee, it is carried out in two stages, namely:

- Fiduciary Guarantee made by notarial deed
- The Fiduciary Guarantee Registration stage which is carried out electronically is the Fiduciary Guarantee registration carried out by the applicant by filling out an electronic application

The problem with the electronic fiduciary guarantee registration process by a notary is usually at the end of the month because the system often has errors, this is something that needs to be considered considering the 30 day fiduciary guarantee registration period. Within 30 days of not being registered, you must immediately make a new fiduciary deed with a different number and register it immediately.⁵

3.1. The process of registering fiduciary guarantees electronically by a Notary

Every agreement made by the community will inevitably lead to a notary as a means of validating an agreement they have made, because that is why the position of a notary becomes increasingly important.⁶

Implementation as a notary official plays an important role in carrying out legal relations in people's lives starting from business relations, banking, land, social

⁴ Eko Puji Hartono, Akhmad Khisni, "The Role of PPAT in Making the Deed of Transfer of Rights to Land and/or Buildings Formerly of Customary Ownership Related to the Payment of Duty on the Acquisition of Rights to Land and/or Buildings", *Jurnal Akta* VOL. 5, No. 1, March 2018

⁵Interview with Notary Soleh in Brebes, 15 March 2022

⁶Harnita, dkk. "Tanggung Jawab PPAT dalam Penetapan Nilai Transaksi Jual Beli Tanah dan Bangunan di Kota Banda Aceh", *Udayana Master Law Journal*, Vol. 8 No. 3 September 2019, p. 354-370.

activities, and others and in this activity requires written evidence in the form of an authentic deed.⁷

Notaries are obliged to apply the precautionary principle to protect the interests of the community and in the implementation of the principle of accuracy and prudence it must be carried out in making a deed by:

- Introducing the parties (recipients and fiduciary givers), based on their identities shown to the Notary
- Asking questions, then listening and observing the wishes of the parties by asking questions
- Checking proof of letters relating to the wishes of the parties
- Provide advice and create a deed framework to meet the wishes of the parties
- Fulfill all administrative techniques for making a notarial deed, such as reading, signing, providing copies, and filing for minutes
- Perform other obligations related to the implementation of the duties of a notary public.⁸

After the enactment of the Circular of the Director General of AHU Number 06.OT.03.01 dated March 5, 2013, the Regional Office of the Ministry of Law and Human Rights as the Fiduciary Registration Office (KPF) no longer accepts manual fiduciary registration registrations and fiduciary guarantee registrations switch to an electronic system or online directly by the fiduciary applicant or his proxies.

Article 1 paragraph (1) Regulation of the Minister of Law and Human Rights Number 10 of 2013 concerning Procedures for Electronic Fiduciary Guarantee Registration states:

Fiduciary security is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Act No. 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors"

⁷ Raisa, Analisis Yuridis Terhadap Penerapan Pasal 35 Undang-Undang Jabatan Notaris Berkaitan Penyerahan Protokol Notaris Yang Telah Meninggal Dunia di Kota Medan, Thesis of Faculty of Law, Universitas Sumatera Utara

⁸ Yunita Budi Chrissanni dan Amin Purnawan, Peranan PPAT dalam Pemungutan Bea Perolehan Hak Tanah dan Bangunan (BPHTB) On Line Atas Transaksi Jual Beli Tanah dan Bangunan di Kota Magelang. *Jurnal Akta*, 4 (3) 2017, p. 3.

Article 1 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 10 of 2013 concerning Procedures for Electronic Fiduciary Guarantee Registration, states that Electronic Fiduciary Guarantee Registration is a Fiduciary Guarantee registration carried out by the applicant by filling out an electronic application

This research was conducted at the notary office of Soleh, SH, M.Kn explained that in the process of registering an electronic fiduciary guarantee application, it is done by filling out the application form first in filling out the application form including:

- Applicant Identity
- Fiduciary Giver Identity
- Fiduciary Recipient Identity
- Fiduciary Guarantee Deed
- Principal Agreement
- Guarantee Value The value of the object that is the object of the Fiduciary Guarantee

Furthermore, the Applicant prints proof of registration after completing filling out the application form with proof of registration as follows:

- Registration number
- Application Fill Date
- Applicant Name
- Fiduciary Registration Office Name
- Application Type
- Fiduciary Guarantee Application Registration Fee in accordance with the provisions of the Act

Proof of registration the applicant pays the registration fee for the Fiduciary Guarantee application through the Perception Bank after making the payment the applicant prints a Fiduciary Guarantee certificate which has been signed electronically by the Fiduciary Guarantee Registration official.

Furthermore, according to Article 1365 of the Civil Code, what is meant by unlawful acts is an unlawful act committed by a person who because of his fault has caused harm to another person. In law, there are 3 (three) categories of unlawful acts, namely as follows:⁹

- Acts against the law because of intentional
- Acts against the law without fault (without elements of intent or

⁹ibid

negligence)

- Acts against the law due to negligence

According to Hans Kelsen the concept related to legal obligation is the concept of legal responsibility. That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions are contrary to applicable law. A person is responsible for his own actions, meaning that legal subjects are identical with legal subjects and obligations. Everyone, including the government, must be held accountable for their actions, whether through error or without error. Legal accountability in question is legal responsibility in criminal, civil and state administration.

Unlawful acts committed by a notary in the category of acts against civil law, the notary should be responsible for the consequences of his actions. If the act causes harm to the parties, the notary must also compensate for the losses and costs incurred as a result of the unlawful act. Notaries can also become defendants or co-defendants for committing acts against the law.¹⁰

Then when viewed from the contractual legal relationship between the notary and the creditor (fiduciary recipient), the notary plays the role of power over the applicant in registering online fiduciary guarantees. In civil law, the power of attorney is responsible for mistakes made by the power of attorney as long as the recipient of the power of attorney exercises his authority in good faith in accordance with the limits of the authority given. So, errors in data entry made by a Notary as the recipient of the power of attorney are the responsibility of the fiduciary registrar as the giver of the power of attorney.¹¹ However, if the notary is negligent at the time of making an achievement, the notary can be said to be in default and must pay compensation. In the event of a discrepancy between the object of the fiduciary guarantee contained in the deed and the online fiduciary guarantee certificate, the notary must repair the certificate as compensation for the mistakes he made.¹² The notary as the person receiving the power of attorney from the applicant for fiduciary registration must submit an application for repair of the fiduciary guarantee certificate to the Minister of Law and Human Rights no later than 30 (thirty) days from the date the fiduciary guarantee certificate is issued.¹³

An application for repair of a fiduciary guarantee certificate shall be submitted by at least containing the number and date of the fiduciary guarantee certificate to be repaired, repair data, and a description of the repair by attaching a copy of the fiduciary guarantee certificate to be repaired, a photocopy of proof of

¹⁰Karina Prasetyo Putri, Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta Yang Pernah Dibuat (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris), *Jurnal Fakultas Hukum*, Universitas Brawijaya

¹¹Interview with Notary Soleh in Brebes, 15 March 2022

¹²Ibid

¹³Article 9 paragraph (1) and Article 10 PP 21 of 2015

payment of the fiduciary guarantee registration fee, and a copy of the fiduciary guarantee deed.

An application for registration of an online fiduciary guarantee must be submitted within a maximum period of 30 (thirty) days from the date of making the fiduciary guarantee deed.¹⁴ Proof of registration will be obtained after the registration application requirements above have been fulfilled. The proof of registration is used to make payments through the perception bank. The registration of the fiduciary guarantee will be recorded in the database of the Fiduciary Registration Office electronically after the applicant has paid the registration fee for the fiduciary guarantee.¹⁵ The Fiduciary Guarantee is born since it is recorded in the database of the Fiduciary Registration Office on the same date as the date the Fiduciary Guarantee is recorded. Then after the registration, the applicant will get a fiduciary guarantee certificate which can be printed by the fiduciary recipient, proxy or representative on the same date as the date the fiduciary guarantee was recorded. The fiduciary guarantee certificate will be signed electronically by the official at the registration office.

The Law on Notary Positions stipulates that when a Notary in carrying out his position is proven to have committed a violation, the Notary may be subject to sanctions or be subject to sanctions, in the form of civil, administrative sanctions and a code of ethics for the position of a Notary.¹⁶ A notary as a public official must be responsible for the deed he did, both administrative responsibility, civil liability and criminal liability if it is proven in the notary deed that a criminal act has been violated.¹⁷ Determining the existence of a criminal act is based on the principle of legality, while determining the existence of criminal liability is based on the principle of error.¹⁸

3.2. Plegal liability for notary negligence in registering fiduciary guarantees electronically

Accountability is a state of being obliged to bear everything (if there is something that can be demanded). A notary, in carrying out his position, has a moral responsibility towards his profession. Professional groups have their own powers and special responsibilities. As a profession, this group has a reference called the Professional Code of Ethics. The Code of Professional Ethics is like a compass that gives or shows direction for a profession and at the same time guarantees the moral quality of that profession in society. Violation of the position of a notary

¹⁴Article 4 Government Regulation no. 21 of 2015

¹⁵Ibid., Article 6

¹⁶Op.cit

¹⁷Ibid

¹⁸Ibid

will ultimately lead to liability for the professional bearer, whether it is administratively responsible or civil compensation, furthermore, a notary can be criminally responsible if a notary violates the Criminal Code in carrying out his duties and positions.

In the registration of online fiduciary guarantees, there is a big responsibility on the Notary because after completing filling in the data to continue the next access, the Notary is asked to approve in advance the statement that all data contained in the form is correct by marking the statement.

According to Widyatmoko, to take action against a "naughty" notary, the Notary Position Law should contain special criminal provisions for a notary if he has been proven to have violated his position. Whether it's a fine, imprisonment or imprisonment. Because a notary is in charge of making a deed, with this deed, a notary can cause someone to lose their rights.¹⁹

There are three forms of notary accountability, namely:

- Notary Administrative Liability

By administrative law, notaries are given authority based on the Law on Notary Positions. Administrative responsibilities of a notary are closely related to the duties and work of a notary. In addition to making an authentic deed, a notary is also assigned and responsible for registering and ratifying a letter or deed made under the hand. The notary's responsibility will arise if the provisions in the Notary Position Act are not heeded and will have legal consequences, namely, the deed made by the notary can become an underhand deed and the deed can be canceled or null and void by law. Administrative notary accountability can be requested through a notary institution/organization.

Determining the existence of a notary administrative responsibility, namely that the notary's actions can be punished for violations that have violated the elements that are expressly regulated in the Notary Position Act. An authentic deed can be qualified as having violated the administrative requirements if the making of the deed is not in accordance with the provisions in the Notary Position Act.

Article 38 of the Notary Law states that every deed must consist of the beginning of the deed or the head of the deed, the body of the deed and the end or closing of the deed. At the beginning of the deed or the head of the deed contains the title of the deed; deed number; hour, day, date, month, and year; full name and domicile of the Notary. Then, the deed section contains the full name, place and date of birth, nationality, occupation, position, position, residence of the appearers and/or the person they represent; information regarding the position of acting against; the contents of the Deed which is the will and desire of the

¹⁹<http://www.Hukumonline.com/berita/baca/hol21125/tak-ada-punan-buat-notarisnakal>, accessed on Friday, March 8, 2022, at 14.00 WIB

interested party; and the full name, place and date of birth, as well as the occupation, position, position, and residence of each identifying witness. Meanwhile, at the end of the deed contains a description of the reading of the Deed; a description of the signing and the place of signing or translation of the Deed, if any; full name, place and date of birth, occupation, position, position, and residence of each witness to the deed; and a description of the absence of changes that may be in the form of additions, deletions, or replacements as well as the number of changes.²⁰

Article 39 paragraph (1) of the Law on Notary Positions stipulates that the appearers must be at least 18 years old or married and capable of taking legal actions. The reading of the deed and witnesses is also regulated in the Notary Position Act, Article 40 of the Notary Position Law states that:

- Every Deed read by a Notary is attended by at least 2 (two) witnesses, unless the laws and regulations provide otherwise.

- The witness as referred to in paragraph (1) must meet the following requirements:
 - At least 18 (eighteen) years old or previously married;
 - Capable of carrying out legal actions;
 - Understand the language used in the Deed;
 - Can put signature and initials; and
 - Do not have marital relations or blood relations in a straight line up or down without restrictions on degrees and sideways up to the third degree with a Notary or the parties.

- The witness as referred to in paragraph (1) must be known by the Notary or introduced to the Notary or explained about his identity and authority to the Notary by the appearer.

- The introduction or statement of the identity and authority of the witness is stated expressly in the Deed

In making a fiduciary guarantee deed to avoid incompatibility of objects guaranteed by a Notary, he must also pay attention to the provisions contained in Article 38, Article 39, and Article 40 of the Law on the Position of the Notary, especially when reading the contents of the deed to the parties and their witnesses clear so that the parties can make corrections if there are errors in the deed.

- Notary Civil Liability

Article 1233 of the Civil Code states that every engagement is born, either by agreement or by law. Violation of the agreement that has been agreed is called a

²⁰Article 38 of the Law on Notary Positions

default, while the violation of a statutory provision and causing harm to others is called an act against the law.

Furthermore, according to Article 1365 of the Civil Code, what is meant by unlawful acts is an unlawful act committed by a person who because of his fault has caused harm to another person. In law, there are 3 (three) categories of unlawful acts, namely as follows:

- Acts against the law because of intentional
- Acts against the law without fault (without elements of intent or negligence)
- Acts against the law due to negligence

According to Hans Kelsen the concept related to legal obligation is the concept of legal responsibility. That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions are contrary to applicable law. A person is responsible for his own actions, meaning that legal subjects are identical with legal subjects and obligations. Everyone, including the government, must be held accountable for their actions, whether through error or without error. Legal accountability in question is legal responsibility in criminal, civil and state administration.

Unlawful acts committed by a notary in the category of acts against civil law, the notary should be responsible for the consequences of his actions. If the act causes harm to the parties, the notary must also compensate for the losses and costs incurred as a result of the unlawful act. Notaries can also become defendants or co-defendants for committing acts against the law.

Then when viewed from the contractual legal relationship between the notary and the creditor (fiduciary recipient), the notary plays the role of power over the applicant in registering online fiduciary guarantees. In civil law, the power of attorney is responsible for mistakes made by the power of attorney as long as the recipient of the power of attorney exercises his authority in good faith in accordance with the limits of the authority given. So, errors in data entry made by a Notary as the recipient of the power of attorney are the responsibility of the fiduciary registrar as the giver of the power of attorney.²¹ However, if the notary is negligent at the time of making an achievement, the notary can be said to be in default and must pay compensation. In the event of a discrepancy between the object of the fiduciary guarantee contained in the deed and the online fiduciary guarantee certificate, the notary must repair the certificate as compensation for the mistakes he made.²² The notary as the person receiving the power of attorney from the applicant for fiduciary registration must submit an application for repair of the fiduciary guarantee certificate to the Minister of Law and Human Rights no later than 30 (thirty) days from the date the fiduciary guarantee certificate is issued.²³

²¹Interview with Notary Soleh in Brebes, 15 March 2022

²²Ibid

²³Article 9 paragraph (1) and Article 10 PP 21 of 2015

An application for repair of a fiduciary guarantee certificate shall be submitted by at least containing the number and date of the fiduciary guarantee certificate to be repaired, repair data, and a description of the repair by attaching a copy of the fiduciary guarantee certificate to be repaired, a photocopy of proof of payment of the fiduciary guarantee registration fee, and a copy of the fiduciary guarantee deed.²⁴

- Notary Criminal Liability

The Law on Notary Positions stipulates that when a Notary in carrying out his position is proven to have committed a violation, the Notary may be subject to sanctions or be subject to sanctions, in the form of civil, administrative sanctions and a code of ethics for the position of a Notary. A notary as a public official must be responsible for the deed he did, both administrative responsibility, civil liability and criminal liability if it is proven in the notary deed that a criminal act has been violated. Determining the existence of a criminal act is based on the principle of legality, while determining the existence of criminal liability is based on the principle of error:

The form of responsibility of a notary in the field of criminal law as in judicial practice in general, includes 3 (three) forms of responsibility, namely:

- Responsibilities as suspects, defendants, and convicts
- Responsibilities as witnesses;
- Responsibilities as experts in providing information and explanations in court proceedings.

In general, there are several crimes that are often committed by notaries in carrying out their positions, including the following:

- Criminal acts regarding forgery of letters as contained in Article 263, Article 264, and Article 266 of the Criminal Code
- The crime of embezzlement as contained in article 372 of the Criminal Code
- Criminal acts regarding fraud as contained in Article 378 of the Criminal Code

If a notary deed has been made by a notary, if it contains elements of a criminal act, causing harm to the parties, and based on sufficient preliminary evidence, the notary should be suspected of having committed or participated in committing or assisting in committing a crime related to the authority of a notary based on Article 15 of the Law on Notary Positions. In the online fiduciary guarantee registration, the notary can also be held accountable from the side of criminal law if the notary is proven to have falsified data when inputting data on the online fiduciary guarantee registration as regulated in Article 263 and Article 264 of the Criminal Code.

²⁴Article 9 paragraphs (2) and (3) of PP 21 of 2015

In the practice of a Notary, typos can occur and are known when reading is being done, but it is not just a typo, it may be that the typed data does not match the facts or the contents of the deed are not all in accordance with the wishes of the appearer. Changes can be made for these errors, but in Article 48 of the Law on Changes to the Notary Position Act, it only allows changes to the contents of the deed. This change can still be made because it is still in the form of a draft deed that does not have the initials and signatures of the appearers, witnesses, and notaries.

Article 48 paragraph (1) of the Law on Changes to the Law on Notary Positions clearly, firmly and straightforwardly prohibits changes to the contents of the deed, even though the construction of the formality of the deed in addition to the body of the deed there is also the beginning and the end of the deed. The beginning and end of the deed is the full responsibility of the notary. Therefore, notaries are prohibited from making mistakes in the contents of the deed. Article 48 paragraphs (1) and (2) of the Law on Changes to the Law on Notary Positions actually do not prohibit changing the contents of the deed, but in the practice of a notary, typos can also occur at the beginning and end of the deed.

Normatively, the prohibition is only specifically for the contents of the deed, it is only allowed to make substitutions, additions, deletions and insertions, the changes are valid if initialed or given another sign of approval by the appearers, witnesses, and notaries. Notaries are prohibited from deleting and or overlapping. Violations of the article, namely making changes that are not initialed or given a sign of ratification and deletion, are written down, according to Article 48 paragraph (3) of the Law on Changes to the Law on Notary Positions, there will be sanctions against the deed, namely the deed only has evidentiary power. as a deed under the hand, and at the Notary, that is, it can be a reason for the party who suffers a loss to claim fees, compensation, and interest.

Since the enactment of Article 48 of the Law on Changes to the Notary Position Act when the Notary reads the deed it turns out that he finds errors in the beginning and end of the deed, the Notary must be responsible and carry out:

- Immediately make changes to the draft deed by reprinting it, if the presenter is still there and there is office equipment to support it.
- If the appearers are no longer in the presence of the Notary, they must contact the appearers again to make repairs to the deed.
- If the presenter cannot be contacted in any way, then if it is not regulated, there is no need to do so.

In making the fiduciary guarantee deed, the notary is also obliged to make corrections to the deed if errors are found in any form in accordance with Article 48 of the Law on Amendments to the Law on the Position of the Notary without deleting and writing down the fiduciary guarantee on the fiduciary guarantee deed. Meanwhile, in the Online Fiduciary Guarantee Registration Process, if the

notary makes an input error, the notary must also be responsible by making improvements to the Online Fiduciary Guarantee Certificate.

Fiduciary Security is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Act No. 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for the settlement of certain debts, which gives priority to the Fiduciary Recipient over other creditors.

Fiduciary guarantee is a follow-up agreement from a main agreement which creates an obligation for the parties to fulfill an achievement.

Article 5 paragraph (1) of Act No. 42 of 1999, states that:

"The loading of objects with a fiduciary guarantee is made with a notarial deed in the Indonesian language and is a fiduciary guarantee deed"

A Notary Deed is an authentic deed that has the most perfect legal force of proof because the imposition of objects with a fiduciary guarantee is stated in a notary deed which is a fiduciary guarantee.

Article 1870 of the Civil Code states that an authentic deed provides a perfect proof of what is contained in it between the parties and their heirs or people who get rights from them as successors. On that basis, the Fiduciary Law requires the imposition of objects that are guaranteed with a fiduciary guarantee to be carried out by a notary deed.

The Directorate General of General Legal Administration (AHU) in providing new breakthroughs for public services so that they can be better by launching an online fiduciary registration system, it is hoped that with online fiduciary legal services in the field of fiduciary services can run quickly, accurately, free from extortion and can promote economic growth in Indonesia.

In carrying out fiduciary electronically, there are also obstacles which consist of displaying the registration form. It is possible for the registration applicant to be not only a notary but there are facilities for the applicant to be an individual or a company. Display of biodata identity for individuals. Display of biodata identity of fiduciary recipients (for companies). SK. In making a fiduciary guarantee deed, you can ask for complete files including TIN and No. Which SK will be included. Display the contents of the main agreement data Display whether it is possible to input agreement data which is jointly or jointly collateral responsibility or

Syndicated Loans and others. If the basic agreement consists of several credit facilities and other facilities²⁵.

Example Debtor A makes a motorcycle credit agreement for the next credit agreement and all changes, the extension which is then made will be called a credit agreement, for repayment in an orderly manner all debtor debts together with interest, fees and other costs as a result of credit facilities in accordance with with credit agreements and guarantee goods such as BPKB. With this there was an agreement between WOM Finance and the Guarantor which finally got several credit facilities, working capital credit facilities and investment credit facilities as well as Guarantee facilities with their respective limits where the fiduciary guarantee is to guarantee the three facilities mentioned above. Display of the final contents of the main agreement Notary can not input the contents of the main agreement in conditions like this, whether it can accommodate on the basis of the Principal Agreement that is more than one Agreement, the input field for the expiration date of which agreement should be inputted. This is because there are interrelationships with each other and their fiduciary guarantees, as well as to guarantee some of these agreements, the display of credit limits and non-cash loan facility ceilings. The display states that this Fiduciary Guarantee is given to guarantee the repayment of the fiduciary debt of Rp. that the fiduciary giver is not necessarily the debtor, and the debtor is not necessarily the fiduciary giver. And if the credit facility limit is totaled together with the non-cash loan facility limit, is it true because the non-cash loan facility is different from a cash loan credit facility?²⁶

The subject or the parties to the consumer financing agreement are the rights related to the consumer financing legal relationship. The difference in terms of the parties in the financing agreement for each financing company is not a problem because basically the meaning is the same, namely the party providing the financing facility and the recipient of the financing facility.

In the practice of financing agreements, there is no similarity in terms of the parties. PT. Wahana Ottomitra Multiartha Tbk (WOM Finance), the parties are referred to as the provider of the facility and the recipient of the facility. In the financing agreement, the term First Party PT. Wahana Ottomitra Multiartha Tbk (WOM Finance) and Second Parties (Consumers). At PT. Wahana Ottomitra Multiartha Tbk (WOM Finance) the parties to the consumer financing agreement are referred to as creditors and debtors/consumers. The object of the consumer

²⁵Firriyandi Nugroho, *Legal Liability for Negligence of a Notary in Registering a Fiduciary Guarantee Electronically Representing a Financing Company PT. Ottomitra Multiartha rides*, December 24, 2021 at 12.00 WIB

²⁶Firriyandi Nugroho, *Legal Liability for Negligence of a Notary in Registering a Fiduciary Guarantee Electronically Representing a Financing Company PT. Ottomitra Multiartha rides*, December 24, 2021 at 12.00 WIB

financing agreement is in the form of providing money loan facilities from the facility provider to the recipient of the facility where the loan funds are used to pay the price of motorcycles, both two-wheeled and four-wheeled from the seller (supplier) or dealer.²⁷

Legal Liability Against Notary Negligence In Registering Fiduciary Guarantees Electronically Representing the Financing Company PT. Wahana Ottomitra Multiartha Tbk (WOM Finance) Brebes, namely if the fraud or deception originates from the notary himself. This can happen if a notary in a transaction of transfer of rights, for example in a deed of sale and purchase, intentionally includes a price that is lower than the actual price into four kinds of responsibilities of the notary for the negligence, namely:

- The notary's civil liability for the material truth of the words he made
- The notary's criminal responsibility for the material truth in the deed he made
- The notary's responsibility based on the Notary Position Regulations on the material truth in the deed he made
- Responsibilities of a notary in carrying out his duties based on a notary code of ethics.

Notaries in carrying out their duties, especially those related to making certificates, must be professional in accordance with applicable rules and notaries must be able to minimize mistakes at work due to the notary's carelessness can be called a practice mall and can be sued by the client as the responsibility of a profession carried by a notary.

4. Conclusion

Legal Liability on Notary Negligence in Registering Fiduciary Guarantees Electronically Representing the Financing Company PT. Wahana Ottomitra Multiartha Tbk (WOM Finance) Brebes, namely if the fraud or deception originates from the notary himself. This can happen if a notary in a transaction of transfer of rights, for example in a deed of sale and purchase, intentionally includes a lower price than the actual price.

²⁷Firriyandi Nugroho, *Op.cit*

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