

## Implementation of Notary Liability in The Making of Deed Based Act No. 2 of 2014 on Notary Position

Syafiera Amelia<sup>1</sup>, Rudi Hendri Basuki<sup>2</sup> and Aryani Witasari<sup>3</sup>

**Abstract.** This study aims to investigate the Implementation Of Notary Liability In The Making Of Deed Based Act No. 2 Of 2014 On Notary Position and how protection Notary Notaries in deed.

This study uses normative legal or sociological approach, as this study does not only include the Legislation and legal materials in the library, but also to the practice field as the supporting data. Also in this study are also used as the primary data source supporting data in a finding that will be examined with regard to liability notarized under Act No. 2 of 2014 concerning Notary.

The results of this study ultimately provide answers form of accountability in the manufacture of a notarial deed notary if a notary to make mistakes as well as a form of protection notary if one were sued by applicant. Implementation responsibilities of office owned by a Notary is not done, then it could result in a deed made void, canceled by the parties or the deed only a proofing tool contract under hand. Because the deed deed null and void, the reason for the parties who suffered damages to sue replacement costs, damages and interest to the Notary. MKN Notary protection given to the Notary that if one made the call by the court to a Public Notary, must request permission in advance to MKN, should be make coordination with INI organization or Competent Senior Notary.

**Keywords:** Notaries; Public Notary Accountability; Deeds.

### 1. Introduction

The Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia of 1945 to ensure certainty, order and legal protection for every citizen. To ensure order and determination needed legal protection and legal events made before or authorities.<sup>4</sup>

Notary born because people need it, not positions that deliberately created new then disseminated to the mob. Notary is not placed in the legislature, executive or judiciary for Notarial expected to have a neutral position. Notary held or presence is desired by the rule of law with a view to help and serve the people who need written evidence that is authentic about the situation, event or legal act

Notary is a legal profession that notary profession is a noble profession. Notary Deed may be a legal pad on the status of property, rights and obligations of a person. The mistake on the deed that created the Notary can cause a person deprived of rights or obligations burdened someone over something, therefore Notaries in performing his respective duties must comply with the various provisions in the Law on Notary.<sup>5</sup>The term public officials is of *Openbare Ambtenaren* terms contained in Act No. 30 of 2004 concerning Notary, promulgated on 6 November 2004 in the Official Gazette of the

---

<sup>1</sup> Students Master Notary Law, Faculty of Law, Universitas Islam Sultan Agung, email: [ameliasyafiera212@gmail.com](mailto:ameliasyafiera212@gmail.com)

<sup>2</sup> Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email [rudihendribasuki@gmail.com](mailto:rudihendribasuki@gmail.com)

<sup>3</sup> Lecturer of Faculty of Law Unissula Semarang

<sup>4</sup> M. Luthfan Hadi Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris*, Yogyakarta, Uii Press, 2017, p. 1.

<sup>5</sup> Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, Yogyakarta, UII Press, 2009, p.46

Republic of Indonesia Of 2004 No. 117 (UUJN) jo. Law of the Republic of Indonesia Number 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary, promulgated on January 15, 2014 Lembaran Republic of Indonesia Of 2014 Nomoe 3 (Act Amendment UUJN). In Article 1 paragraph 1 of the Law Amendment UUJN which confirms that the notary is a public official who is authorized to make an authentic deed and other authorities referred to in this Act. When performing his respective duties, Notary cling and uphold the dignity of their profession as positions of trust and honor. Because adherence of ethics on Notarial profession is referred to as a noble profession (*officium nobile*).

Notary as a public official who runs the profession in providing legal services to the public relating to the manufacture of authentic evidence.<sup>6</sup> Given the breadth of powers mandated by the Act to the Notary, it is necessary for an institution to oversee the actions of the Notary in the execution of his authority as a public official deed authentic vulnerable to abuse such authority. The purpose of the monitoring carried out for is that the Public Notary comply with regulations mandated by the Act in order to maintain the security interests of himself but for the benefit of the public it serves. To that end, the law gives great confidence to the Notary to assume greater responsibility under the law and morality. Regulations on the surveillance protocol checks that are actually very important to maintain order in the work of the Notary.

In practice it is found, if there is a deed of Notary disputed by the parties or any other third party, then often Notary ditark as a party to participate in performing or helping commit a crime, which is making or giving out false information to the Notary deed<sup>7</sup>. In this case the Notary intentionally or unintentionally Notary together with the / applicant to a deed with the intent and purpose to benefit certain parties or applicant or harm another applicant must be proven in court. Notary Deed made according to the will of the parties concerned in order to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties. Notary Deed essentially formal correctness load in accordance with what the parties to the notified public officials (Notary). Notary is obliged to enter into a deed of what is truly understood in accordance with the will of the parties and read out to the parties about the contents of the deed.<sup>8</sup>

Implementation responsibilities of office owned by a Notary is not done, then it could result in a deed made void, canceled by the parties or the deed only a proofing tool contract under hand. Because the deed deed null and void, the reason for the parties who suffered damages to sue replacement costs, damages and interest to the Notary.

Based on the above, always the words of justification in a deed made by a public official in question, namely: "According Statement". As if someone Notary can not take responsibility for the mistakes that are Dalan deed he had done, so the question arises mistakes how to be accountable a Notary as a public official, so that as an institution that berasaskan trust can ensure legal certainty for their clients (public and or the person / entity).

The existence of the above matters through various problems then there are some things that the subject of this permasalahan, namely: First, how the implementation of accountability in making a notarial deed notarized by UUJN? Second, the circumstances of legal protection for Notary Notaries in deed?

## Research methods

<sup>6</sup> Habib Adjie, *Sekilas Dunia Notaris dan PPAT Indonesia*, Bandung, Mandar Maju, 2009, p 1

<sup>7</sup> Habib Adjie, *Hukum Notariat di Indonesia- Tafsiran Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Bandung, Refika Aditama, 2008, p.24

<sup>8</sup> Op.cit, p. 45

This study uses normative legal or sociological approach, as this study does not only include the Legislation and legal materials in the library, but also to the practice field as the supporting data. Also in this study are also used as the primary data source supporting data in a finding that will be examined with regard to liability notarized under Act No. 2 of 2014 concerning Notary.

## **2. Results and Discussion**

### **2.1. Implementation of Notary Responsibility In Making The Deed According UUJN**

Understanding of the notary are regulated in Article 1 paragraph 1 UUJN No. 2 of 2014 which stated that the Notary is a public official who has the authority to make the authentic act and have other powers referred to in UUJN or based on other legislation. Notary present in the community with the will of the rule of law in the form of the State as the implementation of the State in gave the public with the aim to help the public in order to provide written evidence that is authentic about the circumstances, events or legal actions and a means of proof of authenticity recognized by the State<sup>9</sup>. In upholding the law, Notary carry out the mandate that the public interest in general, therefore, mandatory for a Notary to have a professional responsibility to the mandate of its mission.

The responsibility is born as a result of the authority possessed by the public. The authority is a legal act which is regulated and given to a position based on laws and applicable laws regulate the respective positions.<sup>10</sup> Each authority has a limit, as specified in the regulations that govern them.

Responsibility which is owned by the principle of responsibility Notary bjawab by errors (based on fault of liability). The principle of responsibility based on fault must meet four basic elements, namely:

- their deeds
- the element of fault
- their losses
- the causal relationship between the fault and the loss

Error on an element that is against the law. The responsibility of a Notary arise if the error committed in the exercise of their office and fault causes damage to the person who requested the Public Notary services. Unlawful acts by a Notary, not only act which directly violates the law, but also acts directly violate other regulations, the rules are within the scope of morality, religion, and manners in society.<sup>11</sup> Notary occur responsibilities in relation to the duties and obligations imposed on the Notary based on authority given by law. If the Notary as a public official to exercise its authority make authentic act about a Public Notary Responsibilities arises because of the mistakes made in implementing the Notary office tasks, so that the errors arising from the loss to the party requesting the services Notary.

Notary responsibilities in a Notary UUJN intended as an attachment to the provisions of the law in carrying out their duties and obligations. This means that all actions undertaken by the Notary in performing their duties and obligations must be legally defensible, including with all its consequences for legal sanction against violations of legal norms that underlie

---

<sup>9</sup> Paulus Effendi Lotulung, *Perlindungan Hukum bagi Notaris Selaku Pejabat Umum dalam Menjalankan Tugasnya*, Bandung, 2003, p.2

<sup>10</sup>Habib Adjie, *Hukum Notaris Indonesia*, Bandung, Refika Aditama, 2009, p. 77

<sup>11</sup>R. Wirjono Prodjodikiro, *Perbuatan Melanggar Hukum dipandang dari sudut Hukum Perdata*, Bandung, Mandar Maju, 2000, p. 6

them.<sup>12</sup> Below is the responsibility of the Notary in their duties among others to:

1. God Almighty, in accordance with the oath or promise uttered by their respective religions, thus meaning that everything that is done by the Notary in his duties and will be accountable before God.
2. State and society means that the state has given the confidence to run as from evaluating the state in the field of civil law, namely in the manufacture of items of evidence in the form of a deed that has the strength of evidence is perfect, the people who have come to believe that a Notary be able to formulate his will in the form of notarial deed and any information or remark granted before Notary.

Based on the description above, basically the form of a notarial deed containing deeds and things dikostatir by notary, generally must follow the provisions of the legislation in force, both provided for in the Law of Civil Law and the Law of Notary, often have problems, sometimes deed made by Notary contents are not in accordance with the statements of the parties or common deed before a Notary disability caused by their negligence law Notary itself at the time of a deed. As a result, the deed before a Notary of the loss keotentitakannya, so menjdi deed under hand or even the deed declared null and void. In such conditions, the Notaries can be held responsible from a legal perspective. Regarding liability law Notary terms can not be separated from liability in terms of criminal law, and administrative law merdata. This is in line with the prevailing principle that anyone who harmed the right to make claims or demands. The lawsuit against the Notary may occur if the publication of notarial deed does not comply with the procedures that result in losses. On the other hand, if a deed until canceled, the Notary concerned may be held legally accountable Administration, Civil Law and Criminal Law. This is in line with the prevailing principle that anyone who harmed the right to make claims or demands. The lawsuit against the Notary may occur if the publication of notarial deed does not comply with the procedures that result in losses. On the other hand, if a deed until canceled, the Notary concerned may be held legally accountable Administration, Civil Law and Criminal Law. This is in line with the prevailing principle that anyone who harmed the right to make claims or demands. The lawsuit against the Notary may occur if the publication of notarial deed does not comply with the procedures that result in losses. On the other hand, if a deed until canceled, the Notary concerned may be held legally accountable Administration, Civil Law and Criminal Law.

Notary who committed acts against the law in their profession shall be accountable for the act of doing it. Notary great responsibility in their profession requires Notaries to always be careful and cautious in every action. However, as a human being, of course, a Notary in carrying out his duties and sometimes not infallible either because of deliberate action or negligence which then could harm others. In the application of sanctions against Notaries, there are several requirements that must be met and that actions should fulfill the formulation Notary act is prohibited by law, the loss arising from the Notary deed as well as the act is against the law, both formal and material.

The relationship between the theory of liability is the problem that the authors describe that Notary exercising authority as a public official has made the authentic act is good and right as well as conformity with the provisions of the legislation in force, but did not rule in carrying out duties of a Notary commit mistakes harm others, then the Notary may be liable for such mistakes. So the accountability theory is used to analyze what can be charged to the Notary of accountability for mistakes made during melaksanakan Notary and his task, so that will be able to give satisfaction to the injured party for his actions.

---

<sup>12</sup> Wawan Setiawan, *Tanggung Jawab Notaris Dalam Pembuatan Akta*, Papers in national seminar Diponegoro Notary Association, Semarang, March 9, 1991.

## 2.2. Protection of Notary In Making The Deed

In the UUJN no one article that specifically regulates the legal protection of the Notary. Basically, the legal protection is only implied in Article 66 of the supervision of the Notary that aims to provide legal protection for a notary in the line of duty and his post as General Authorities. Article 66 UUJN determined that for the judicial process, investigators, prosecutors or judges with the approval of the Assembly Regional Supervising authorities took photocopies of minutes of certificates or letters attached to the minutes of the deed or protocol notary in storage notary and call Notaries in storage Notary and Notary summons to attend the examination relating to a deed made or Notary protocols that are in storage.

Legal protection as set out in the UUJN apply when the Notary still served as General Authorities. After the end of his tenure, there is no provision in the UUJN explaining the legal protection of a Notary who has ended his tenure.

Unifying thought to the possibilities of error by notaries who need to be distinguished, namely personal mistakes and errors in carrying out his duties. For errors of a personal nature, the mechanism is the same as ordinary people can be held accountable, and apply the same legal protection mechanisms with ordinary people in general. Against the errors related to the notary office, should be given legal protection mechanism which is different from ordinary people even if the notary has expired term of office or after-service.

In terms of making a deed of authentic Notary is not uncommon in question by one, the parties or by the other party because it is considered detrimental to their interests, whether with the incompatibility of deed, denial of the contents of the deed, the signature and the presence of the Notary, even a suspicion in the authentic act is found false statement. Notary law relating to the protection against the deeds related responsibility made a civil notary, by their lack of caution and seriousness performed by a Notary, the Notary actually have mebawa himself in an act which by law must be accounted for. If a kesalahan performed by a Notary can be proven.

The legal protection given to the Public Notary provided for in Article 66 UUJN. Article 66 regulates the establishment UUJN Honorary Council of Notaries (hereinafter referred to MKN) consisting perwakilan Notary, government and academia, which functions as an institution of legal protection for Notary associated with a deed made by or before him.

The existence of this MKN, expected can contribute to the optimal law Notary institutions in performing his duties as an institution of legal protection. Regarding the setting of the position and shape of the legal protection of MKN is actually not strictly regulated by UUJN or in a hierarchy of legislation to another.<sup>13</sup>

MKN notch in providing a legal protection for the Notary is an institution that is independent, because in this case the existence of MKN not a sub part of the government who appointed him. MKN in mnjalankan authority issued a decision is not influenced by the parties or other institutions, so in this case generated by MKN decision is not inviolable.<sup>14</sup>

Based on the above it can be seen that the legal protection for Notary on the deeds which made related to civil liability is calling Public Notary by investigators, prosecutors and judges to do with getting persetujuan MKN.

## 3. Closing

---

<sup>13</sup>Irene Dwi Enggarwati, *Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Tesis, Master of Notary, Faculty of Law, Brawijaya University, Malang. 2015, p.17

<sup>14</sup> *Ibid*, p.18

### 3.1. Conclusion

- Basically everything was done by someone either intentionally or unintentionally, in the end should be requested of responsibility and accountability, especially with regard to the duties and obligations of the legal profession, such as the office of Notary, accountability is a principle of professionalism and as a form of commitment to the implementation of the duties of office as stipulated in Act No. 2 of 2014 concerning Notary
- Legal protection of the office of Notary as Acting general entrusted by the public that the Notary is obliged to keep the contents of the deed and the information obtained in order to protect himself and the party from the negative impact in carrying out its obligations in accordance with the wishes of the applicant / parties, from the fact that there are and not contrary to law. In other words, legal protection notary also by deed made.

### 3.2 Suggestion

As for suggestions that can be provided on the above conclusions on the implementation of a Public Notary accountability in the manufacture of a notarial deed pursuant to Act No. 2 of 2014 concerning Notary is as follows:

- To maintain the trust and to protect the people who enlist the services of a Public Notary called for more careful in his duties melaksanakan. For the authorities for producing an authentic act is expected to always check every deed he made to avoid mistakes.
- In order notaries who carry out the noble task of helping people resolve legal issues it faces to always act carefully, cautiously and increase their knowledge to explore the laws and regulations that apply to both during the running position as the Notary, so it can be as minimal as possible the occurrence of the act or deed born disputed by the parties concerned

## 4. BIBLIOGRAPHY

- [1] Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, Yogyakarta, UII Press.
- [2] Habib Adjie, 2009, *Sekilas Dunia Notaris dan PPAT Indonesia*, Bandung, Mandar Maju.
- [3] -----, 2008, *Hukum Notariat di Indonesia- Tafsiran Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Bandung, Refika Aditama.
- [4] Irene Dwi Enggarwati, 2015, *Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Tesis, Master of Notary, Faculty of Law, Brawijaya University, Malang.
- [5] M. Luthfan Hadi Darus, 2017, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris*, Yogyakarta, Uii Press.
- [6] Paulus Effendi Lotulung, 2003, *Perlindungan Hukum bagi Notaris Selaku Pejabat Umum dalam Menjalankan Tugasnya*, Bandung.
- [7] R. Wirjono Prodjodikiro, 2000, *Perbuatan Melanggar Hukum dipandang dari sudut Hukum Perdata*, Bandung, Mandar Maju.
- [8] Wawan Setiawan, *Tanggung Jawab Notaris Dalam Pembuatan Akta*, Article in National Seminar Diponegoro Notary Association, Semarang, 9 March 1991.