

Legal Protection of Third Parties in Problematic Notarial Deeds Based on Law No. 2 of 2014 and the Civil Code

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Abstract. *This study aims to analyze the form of legal protection for third parties in problematic notarial deeds and to examine the extent of the notary's responsibility if the deed causes losses to parties other than the parties who appear directly. This problem is important to study considering that notarial deeds have perfect evidentiary power and can have broad legal consequences, including for third parties who are not directly involved in making them. The method used in this study is the normative legal method with a statutory approach and a case approach. Data were obtained through a literature study covering primary and secondary legal materials, and were analyzed qualitatively to interpret applicable legal provisions and their application practices in dispute resolution. The results of the study indicate that legal protection for third parties has not been explicitly regulated in Law No. 2 of 2014 concerning the Position of Notary or in the Civil Code. However, protection can be provided through the application of general principles in civil law such as good faith, the principle of prudence, and the principle of responsibility for unlawful acts. Notary liability can be requested if there is proven negligence in carrying out his/her duties that causes losses to third parties. This liability can be in the form of civil, administrative, or even criminal liability, depending on the form of violation committed. The conclusion of this study emphasizes the importance of strengthening regulations regarding notary liability and protection of third parties more firmly in laws and regulations. In addition, progressive legal interpretation is also needed from the judicial institution to ensure justice and legal certainty for all parties affected by the existence of notarial deeds.*

Keywords: *Liability; Notary; Protection.*

1. Introduction

Notaries have an important role in the world of civil law, especially as public officials who are authorized to make authentic deeds as regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN). Notarial deeds made by notaries have perfect evidentiary power and are considered true by law as long as they are not proven otherwise in court (Erliyani, 2020). The deed is not only binding on the parties who made it, but can also have legal consequences for third parties who did not participate in its making. Therefore, the existence of a notarial deed is an important instrument in ensuring legal certainty and protection.

However, in practice, legal issues related to the validity or authenticity of notarial deeds are not uncommon. These problems can arise due to negligence by the notary, falsification of data, violation of procedures, or even bad intentions from the parties (Edy & Sudiro, 2022). When a problematic notarial deed causes losses to a third party, the question arises as to the extent to which legal protection can be provided to third parties who are not involved in the legal act. Third parties are often in a weak position, because they do not have the opportunity to directly know the process of making the deed or the contents of the agreement in its entirety. The Notary Law and the Civil Code (KUHPPerdata) have not explicitly regulated the legal protection mechanism for third parties in the context of problematic notarial deeds. This creates a legal gap in legal protection for third parties, especially when the notarial deed is used as evidence in the legal process and turns out to cause real losses. Several court decisions show different views in assessing the legal position of third parties in disputes involving notarial deeds (Saputra & Bawono, n.d).

In analyzing legal protection for third parties in problematic notarial deeds, this study uses the theory of legal protection put forward by Philipus M. Hadjon. According to him, legal protection for citizens includes preventive and repressive protection aimed at providing a sense of security and justice against arbitrary actions, including in this case losses suffered by third parties due to legally flawed notarial deeds. In addition, the theory of notary responsibility is also an important reference, especially in assessing the extent to which the role and negligence of a notary can affect the validity of a deed against other parties outside the parties directly involved (Oktavia, 2021).

The approach used in this study is a normative legal approach, namely by examining relevant statutory provisions, such as Law No. 2 of 2014 concerning the Position of Notary, the Civil Code (KUHPPerdata), as well as implementing regulations and other legal documents. In addition, a case approach will be used to analyze court decisions related to notarial deed disputes involving third parties, so that it can provide an empirical picture of the legal protection provided by the court (Mala, 2017).

The purpose of this study is to analyze the forms of legal protection that can be provided to third parties in the event of legal problems over notarial deeds. This study also aims to identify the extent of the notary's responsibility if the deed he made harms other parties who are not directly involved, and to formulate normative recommendations so that statutory provisions can provide clarity and legal certainty for all affected parties. It is hoped that the results of this study can be a reference in the development of notarial law and the formulation of policies that are more in favor of the principles of justice and equal legal protection. Therefore, this study is important to examine how legal protection for third parties in problematic notarial deeds is provided, by referring to the provisions of Law No. 2 of 2014 and the Civil Code, while also exploring the relevance of the principle of prudence and notary responsibility. This research is expected to contribute to strengthening the legal position of third parties in the Indonesian legal system.

2. Research Methods

This study uses a normative legal research method, namely research that focuses on the study of applicable positive legal norms, both in the form of laws and legal principles. The data used is secondary data, consisting of primary legal materials such as Law No. 2 of 2014 concerning the Position of Notary and the Civil Code, as well as secondary legal materials such as legal literature, scientific journals, and expert opinions. In

addition, this study is also supported by a case approach through an analysis of court decisions relevant to notarial deed disputes involving third parties. Data collection techniques are carried out through literature studies, while data analysis is carried out qualitatively by interpreting applicable legal regulations and comparing their application in practice through critical legal studies. This approach aims to gain a deep understanding of legal protection for third parties and the limits of notary responsibility in the context of problematic deeds.

3. Results and Discussion

3.1. The Form of Legal Protection for Third Parties in Problematic Notarial Deeds according to Law No. 2 of 2014 and Civil Code

Legal protection for third parties in problematic notarial deeds is a crucial issue in civil law practice in Indonesia. Notarial deeds have perfect evidentiary force because they are made by authorized public officials, namely notaries, as regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries (UUJN). The deed is not only binding on the parties who sign it, but can also have legal consequences for third parties who are not directly involved in its creation. Therefore, when a notarial deed is problematic — either due to formal or material defects — and causes losses to third parties, it is necessary to question how the legal protection for these parties is.

Law No. 2 of 2014 does not explicitly regulate the mechanism for legal protection for third parties. However, there are several provisions that implicitly provide a legal basis for this. For example, Article 16 paragraph (1) letter a of the UUJN requires notaries to act honestly, independently, impartially, and responsibly in carrying out their duties. This obligation reflects the prudential principle that must be implemented to ensure the validity of the deed and protection for all parties who may be affected by its law, including third parties. If the notary is negligent and this causes losses to other parties, including third parties, then the notary can be held liable civilly or administratively (Borman, 2019).

Meanwhile, the Civil Code provides protection for third parties in the context of unlawful acts (*onrechtmatige daad*), as regulated in Article 1365. In this context, if a third party suffers a loss due to an unlawful act related to a notarial deed — either due to the fault of the notary or one of the parties to the deed — then the third party has the right to claim compensation. On the other hand, the provisions on good faith in the Civil Code are also an Important consideration. A third party who acts in good faith, but is harmed due to the contents or validity of an invalid deed, has a legal position that must be protected by the court.

In addition to normative instruments, legal protection for third parties can also be realized through the active role of the court in interpreting the law fairly and proportionally. The court has the authority to assess the validity of a notarial deed and its impact on third parties based on the facts and evidence presented. In several decisions, the Supreme Court has provided protection to third parties who are harmed by deeds that turn out to contain legal defects, such as deeds signed without the legal presence of the parties, or deeds prepared based on incorrect data. These decisions show that legal protection does not only depend on the formulation of the law, but also on judicial practices that consider the principles of justice and good faith.

In addition, the principle of prudence in notarial practice is important to note, especially because notaries are often the only party that mediates the agreement of the parties in the deed. Failure of a notary to carry out his duties carefully can have a direct impact on third parties who depend on the legality of the deed, for example in sales transactions, debt agreements, or the establishment of a legal entity. Therefore, strengthening the notary code of ethics and supervision from the Notary Supervisory Board is also part of the legal protection system that indirectly provides guarantees to third parties (Arianto & Djajaputra, 2025).

Furthermore, legal protection for third parties needs to be accommodated through strengthening regulations, for example by revising the UUJN to include special provisions regarding the rights of third parties who are harmed and clarifying the notary's accountability mechanism. Harmonization between the UUJN and the Civil Code is important so that there is no conflict in its application, especially regarding the general principles of civil law such as good faith, justice, and legal certainty. Thus, legal protection for third parties is not only reactive when a dispute occurs, but also preventive by ensuring that notarial deeds are made in accordance with correct legal procedures and honest substance. Thus, although there is no specific regulation that explicitly regulates legal protection for third parties in problematic notarial deeds, the general principles in UUJN and KUHPerdata provide a basis for protection that can be used as a legal basis. A progressive interpretation of these provisions is important so that third parties do not become victims of legal uncertainty.

3.2 To What Extent is the Notary's Responsibility if the Deed He Made Causes Losses to Third Parties

The notary's liability for deeds that cause losses to third parties is an important issue in the context of legal protection and the professionalism of public officials. In Law No. 2 of 2014 concerning the Position of Notary (UUJN), notaries have an obligation to act honestly, independently, impartially, and responsibly. If the deed made by the notary is found to contain legal defects that harm a third party, the notary can be held accountable, either civilly, administratively, or in certain circumstances criminally (Rizgi & Wisnuwardhani, 2024). Civil liability can arise if it is proven that the notary has committed negligence or violated legal procedures that result in losses to other parties, in accordance with the provisions of Article 1365 of the Civil Code concerning unlawful acts. The notary is formally responsible for the validity of the form and procedure for making the deed, including ensuring the presence of the parties, correct identities, and the free will of the parties making the deed. If the notary is negligent in carrying out this verification, then his responsibility is not only limited to the parties to the deed, but can also extend to third parties who are victims of the validity of the deed. For example, in the case of land sale and purchase, if the deed is made without the presence of one of the legitimate parties or using a false identity, and then a third party buys the object in good faith, then the notary can be considered jointly responsible for the losses incurred (Prananda & Anand, 2018).

In administrative aspects, a notary who is proven to have violated the obligations and ethics of the position can be subject to sanctions by the Notary Supervisory Board, ranging from warnings to dismissal. Even in some cases, the negligence of a notary that causes major losses can be the basis for criminal liability, especially if there is an element of Intent or engineering. Thus, the responsibility of a notary is not only internal in relation to the client, but also external to third parties who are harmed by the existence or

content of the deed he made. This shows that the position of a notary as a public official demands high responsibility for every legal product he issues.

The notary's responsibility towards third parties cannot be separated from the prudential principle inherent in his profession. As a public official, a notary is not only tasked with recording the will of the parties, but must also ensure that every deed he makes does not cause harm to any party, including third parties who may have legal problems in the future. Therefore, a notary has the responsibility to conduct a thorough examination of supporting documents, the validity of the legal subject, and the substance of the agreement before being written down in the form of a deed. Failure to meet this prudential standard can result in the deed being considered legally flawed, which in turn can harm third parties, especially if the deed is used in further transactions.

Furthermore, the notary's responsibility towards third parties can also be seen from the perspective of the causal relationship between the notary's actions or omissions and the losses incurred. If it can be proven that there is a causal relationship between the notary's error and the losses suffered by the third party, then the notary's responsibility becomes stronger legally. In practice, this proof is not always easy because notaries often argue that they only record the will of the parties, without being involved in the substance of the agreement. However, the court can assess the extent of the notary's involvement in the deed-making process and whether there has been a violation of the procedures or code of ethics of the profession (Setyabudi, 2019).

One of the challenges in holding notaries accountable is the absence of detailed and explicit regulations regarding third party protection in the UUJN. This creates legal uncertainty and a fairly broad scope for interpretation in resolving disputes. Therefore, there needs to be a reformulation of regulations that emphasizes that the notary's responsibility is not only administrative towards the state or the parties who appear before him, but also social towards anyone affected by the existence of the deed. By clarifying the limits and forms of notary responsibility in this context, it is hoped that a balance will be created between authority and responsibility, as well as fairer legal protection for all parties.

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4. Conclusion

Based on the discussion that has been conducted, it can be concluded that legal protection for third parties in problematic notarial deeds has not been explicitly regulated in Law No. 2 of 2014 concerning the Position of Notary or the Civil Code. However, such protection can be provided through interpretation of general provisions in laws and regulations, especially those relating to the principle of good faith, the principle of caution, and the principle of responsibility for unlawful acts. Third parties who are harmed by a notarial deed have the right to claim compensation if it is proven that there was negligence or a violation of the law in the process of making the deed. The responsibility of a notary in the event that the deed he made causes losses to a third party can be civil, administrative, or even criminal, depending on the level of error and the legal consequences that arise. Notaries are required to act professionally, carefully, and impartially, because their responsibility is not only limited to the parties to the deed, but also includes third parties who are potentially affected by the deed. Therefore, it is important for notaries to carry out their duties based on high standards of caution and comply with legal provisions and the code of ethics of the position. To strengthen legal protection for third parties, a more comprehensive regulatory update is needed, especially in the UUJN, to emphasize the forms of notary responsibilities and the rights of third parties who are harmed. In addition, judicial practices are also expected to continue to develop by providing fair and progressive decisions, so that they can create legal certainty and justice for all parties related to notarial deeds.

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