

Legal Implications for Notaries Who Commit Malpractice in Making Authentic Deeds in Kendal Regency

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Abstract. *Notaries who are authorized officials who have the authority to make authentic deeds can be sued for malpractice in making deeds, claims against notaries who commit negligence or malpractice can be reported and submitted to the notary honorary council (mkn) and also the police. this study aims to determine and analyze the consequences and also the responsibility of notaries for the malpractice they carry out, this study will also analyze the legal protection obtained by notaries if they are suspected of committing malpractice in the process of making authentic deeds. The research approach method used in this thesis is the sociological juridical legal research method. The specification of this research uses descriptive analysis. The types of data used in this study are primary data, secondary data and tertiary data and secondary data contains books and other supporting documents. Collection of research data with interview techniques or library materials. The consequences that occur when this act of malpractice in making a deed occurs are that the notary will receive legal consequences in court in the form of paying the compensation demanded, in addition, a notary who commits malpractice can also have his/her position as a notary revoked honorably, dishonorably, or temporarily by the Ministry of Law and Human Rights, socially the notary no longer has the trust of the community.*

Keywords: *Notary; Malpractice; Responsibility.*

1. Introduction

Notary is not a civil servant, Notary is a public official who is authorized to make authentic deeds regarding all acts, agreements, and determinations required by a general regulation or by the interested party desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and extracts, all as long as the deed by a general regulation is not assigned

or excluded to other officials or people. The position of Notary may not be held concurrently with the positions of Governor, Head of Region, Judge, Estate Planning Office, Advocate (Notary regulation in article 10).¹

In general, there are two schools of thought in notarial practice, namely common law and civil law. A country with a civil law system is a country whose legal system is developed by scientists and determined by the state. Notaries in the civil law system are the same as judges. Notaries are only parties who implement the rules. As a party appointed by the state, Notaries can be categorized as state officials. The government relies on the authority of Notaries to record and determine and raise legal awareness to the public, especially those related to the legality of agreement documents or cooperation. A deed made by a Notary in the civil law system is a perfect authentic deed so that it can be used as valid evidence in court. Unlike civil law countries, in the common law system the legal rules are determined by judges and the position of Notaries in the common law system is different from the position of Notaries in civil law.

Notaries have an obligation to make documents or deeds requested by the public. A notary cannot refuse the request because that is one of the main duties of a notary. A notary can be sued if he refuses to make a deed without a clear reason because it is an obligation mandated by law. If there is a refusal, it means that the notary has violated the law. If a notary has a strong reason to refuse to make a deed, the refusal must be based on the unclear legality of the party submitting the lease request.

A deed is a writing that is deliberately made to be used as evidence. Article 1868 of the Civil Code states that an authentic deed is a deed that has been determined by law to be made by or before a public official who has the authority to do so at the place where the deed is made. R. Tresna stated that in general the deed is a signed letter, making information about events or things that are the basis of a right or an agreement, it can be said that a deed is a writing by which a legal act is stated.²The deed has the ability to prove itself as an authentic deed, as regulated in Article 1875 of the Civil Code. If a deed is seen as an authentic deed, meaning that the words come from a public official (Notary), then the deed is considered by everyone to be an authentic deed. An authentic deed is complete (binding) evidence, meaning that the truth of the things written in the deed is considered true, as long as no other party can prove otherwise.³

¹GHS Lumban Tobing, *Notary Regulations*, Erlangga, Jakarta, 1983, p. 31

²R. Tresna, *HIR Comments*, Pradnya Paramita, Jakarta, 1993, p.142.

³Teguh Samudra, *Law of Evidence in Civil Procedure*, First Edition, PT. Alumni, Bandung, 2004, p.49.

Notaries in carrying out their duties are expected to be honest, thorough, independent, impartial and protect the interests of other parties. The making of a notarial deed, both a release deed and a party deed, which is the main basis or core in making a notarial deed, namely there must be a desire or will and request from the parties, if the desire and request of the parties do not exist, then the notary will not make the deed in question. The notary is obliged to keep the contents of his deed confidential.

Nowadays, it is no longer a secret that Notaries are often called to court to provide information on deeds or documents that are in dispute. This raises the question of whether the Notary has acted inconsistently with the Laws and Regulations and the Notary Code of Ethics or whether there was an error, either intentional or unintentional, by the parties that caused losses to other parties by providing incorrect information and documents. Notaries can be subject to sanctions in the form of civil, administrative or Job Code of Ethics.

The provisions in the Notary Law do not mention the application of criminal sanctions but legal action against violations committed by notaries that contain elements of forgery due to intent or negligence in making fake authentic deeds or deed can be subject to administrative sanctions/in the form of civil witnesses and can then be withdrawn and qualified as a criminal act. Thus, if proven, the notary must be responsible for the deed he made. However, Notaries as public officials also need to receive protection and guarantees in order to achieve legal certainty.

2. Research Methods

The type of research used is sociological legal research, sociological legal research is legal research whose data sources are obtained from primary and secondary data sources which aim to obtain legal knowledge empirically and the focus of the study is the working of law in society.⁴ The approach method used in this study is a qualitative approach method. Qualitative Method is a scientific research that aims to understand a phenomenon in social contact naturally by prioritizing the process of deep communication interaction between researchers and the phenomenon to be discussed.⁵

⁴Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: Publisher University of Indonesia Press, 2005, p. 51.

⁵Lexy J. Moleong, *Qualitative Research Methodology*, (Bandung: PT Remaja Rosdakarya, 2013), p. 6

3. Results and Discussion

3.1. Legal Implications for Notaries Who Commit Malpractice in Making Authentic Deeds in Kendal Regency

The legal implications for a notary who is proven to have committed malpractice in making an authentic deed are social sanctions that will cause the notary to lose his position and the notary will also suffer losses resulting from the lawsuit filed. The notary is required to pay compensation for costs and interest from the lawsuit for the authentic deed, this can make the notary lose everything because what happens is that the public will always assume that the notary is not trustworthy in carrying out his duties and authorities so that there is no longer any trust in the notary from this public distrust will result in the notary not having clients and can also lose his job.

The description above mentions the consequences that will arise if the notary does not carry out his duties in accordance with the authority that has been regulated in the applicable Law. The law in question regulates the position of a notary which should prevent notaries from committing malpractice if the notary carries out his duties in accordance with the regulations. The regulation explains many things including the appointment of a notary, the authority as a public official and also the duties and methods of his trial.

Notaries as public officials who have the authority to make authentic deeds must always adhere to the regulations that have been set out in the Notary Law and the Notary's code of ethics in order to improve the professionalism of a Notary, where this should also be a reference for notaries to carry out their duties properly, in the process notaries must also pay attention to the standards or requirements intended for authentic deeds. If the requirements stated in the regulations have all been carried out and fulfilled, it can be ascertained that a notary will be free from the demands directed at him.

Reflecting on the criminal responsibility of a notary, violation of criminal law alone will not be enough if it is to be used as a reason that can make a notary get a punishment or be sentenced to a criminal offense. The role and responsibility of the notary itself is the notary's obedience to the oath of office that he has taken, this obedience is what forms the basis of a notary's professional code of ethics. The Notary Code of Ethics is a moral rule that has been determined by the Indonesian Notary Association based on a congress that has been carried out in accordance with the laws and regulations governing this matter, this regulation must be obeyed and implemented by every member of the association and also all people who carry out the position of notary or temporary officials who become substitute notaries when carrying out their positions and duties.

The previously written and mentioned regulations emphasize the responsibility of a notary for his/her mistakes, so the notary will be asked to pay compensation in the form of money, interest and also costs, but before the notary is responsible for the compensation, there are elements that must be fulfilled and proven legally.

A notary who commits an act that violates the laws and regulations regarding an authentic deed he/she has made can be said to have committed malpractice. If a notary commits a violation, the notary must be responsible for what he/she has done. When the claim for alleged malpractice is proven, the notary will receive a summons for investigation and also trial from the relevant party that has been approved by the Notary Honorary Council (MKN). The notary will experience many losses and public distrust of what he/she has done. This is certainly not justified in Islam because anything that is manipulative and detrimental to others is not good and is not justified in Islam. Moreover, if someone has been given a mandate but cannot carry it out properly, then that person is included as a hypocrite or traitor.

3.2. Notary's Responsibility for Malpractice in Making Authentic Deeds in Kendal Regency

What might happen related to malpractice in making notarial deeds is, if a member of the public comes to a notary to make an authentic deed, they should bring complete documents from the intended agreement, the applicant must come for the explanation process of the written regulations and later will be given an explanation by the notary, if a notary in the process of checking the documents and also explaining these regulations is negligent, then in this process the intended malpractice can occur, it could be due to documents that are not in accordance or the notary does not provide an explanation of the applicable laws and regulations.

Another condition that can cause malpractice in the process of making a deed of reporting or agreement is if at the time of signing or at the time of reading the contents of the agreement that must be read by the notary there is no party concerned or the party concerned can be replaced by another person. This will make the authentic deed invalid and also cause malpractice in making the authentic deed.

The notary is responsible for ensuring that the documents that will be used as files and evidence of the agreement are authentic. In addition, the notary is also responsible if in the future the deed that he has made is sued in court due to his mistakes or negligence in checking the files.

Notaries who are suspected of committing malpractice against authentic deeds they have made can be sued by their clients, if this happens then the notary must be responsible for the actions they have taken by providing all statements and documents requested as evidence of the investigation. In addition, the notary is also obliged to provide compensation as proof of responsibility for the malpractice that has been carried out if it has been proven to be true.

A Deed can be declared as an authentic deed if it contains the truth and is in accordance with whatever the client requests or whatever is notified to the notary. In the process of making the deed, a notary must request the original document and also investigate all matters relating to the agreement process, because in the process a notary must also provide counseling regarding applicable regulations and also about appropriate legal knowledge.

Legal protection for the duties of a notary in question is legal protection that includes the summons of a notary from a legal perspective, if a notary receives a lawsuit regarding an authentic deed that has been made by him/her when the authorized party will conduct an investigation or summons him/her to court, it must be approved by the Notary Honorary Council (MKN) first, where the process of granting permission for an investigation of this notary must be discussed in an internal congress of the Notary Honorary Council (MKN).

The Indonesian Notary Association (INI) will later act as a defender who can file for relief - relief for the demands imposed on the notary. The Indonesian Notary Association (INI) which will act as a defender or from the notary itself must comply with the rules of law in accordance with the procedures and procedures that have been regulated in the Notary Position Regulations.⁶

The sanctions that a notary can receive for negligence of his/her responsibilities are in the form of compensation according to the demands of the client and of course will receive social sanctions which could result in the notary losing his/her position as a notary.

4. Conclusion

The consequences that will occur when a notary commits malpractice against an authentic deed that he has made are social sanctions that will be received by the notary. Where the community will no longer trust the notary for the process of making authentic deeds because the notary is considered not to maintain the trust that has been given, in addition the notary will also receive losses from the compensation that must be paid for the bad things he has done, this loss will make the notary lose his clients over time and then what will happen in the long

⁶Interview with Notary in Kendal NurKhamid, SH, M.Kn., on January 10, 2024.

term is that the notary will go bankrupt from his position. Currently, the process of making authentic deeds and also the duties and positions of notaries at the Kendal Regency Notary Office have followed existing provisions. If there is malpractice carried out by the notary, the law will still be enforced in accordance with what must be determined. The consequences that will be obtained if a notary commits malpractice while carrying out his/her duties can be in the form of moral sanctions or having to be held legally accountable. This legal accountability will be processed in accordance with the applicable Notary Law and will also be given moral sanctions under the supervision of the Regional Honorary Council or the Central Honorary Council which is tasked with supervising this matter.

5. References

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