

Notary's Responsibility for Errors in the Authentic Deed Making Process

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Abstract. *This study aims to analyze the notary's responsibility for errors in the process of making authentic deeds based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. This study uses a sociological juridical approach with descriptive analytical research specifications, using primary and secondary data collected through literature studies and interviews, then analyzed qualitatively. Based on the study, it is concluded that notaries have legal responsibilities that include civil, criminal, and administrative aspects when errors occur in the process of making authentic deeds. Errors can be categorized into five types, namely errors related to the parties present, the object of the deed, the content of the deed, the formality of the deed, and the notary protocol. The legal implications of these errors can result in the deed being canceled, null and void, or only having evidentiary force as a private deed. The analysis of the case of the High Court Decision Number 166/PDT/2018/PT YYK shows that a simulated deed can be declared null and void and provides legal certainty. Error prevention can be done through a thorough understanding of the regulations, caution, thoroughness in carrying out duties, and proper notary protocol keeping.*

Keywords: *Authentic Deeds; Legal Certainty; Legal Sanctions; Notary's Responsibility; Process Errors.*

1. Introduction

Indonesia as a state based on law has mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that the state is based on law (*rechtstaat*), not on power (*machtstaat*). This concept of a state based on law philosophically describes the desire of the nation's founders to create a state that protects all Indonesian people, advances general welfare, educates the nation's life, and participates in maintaining world peace based on independence, eternal peace, and social justice as stipulated in the 1945 Constitution of the Republic of Indonesia based on Pancasila.¹The implementation of this rule of law requires three basic principles, namely the supremacy of law, equality before the law, and law enforcement with procedures that do not conflict with the rule of law, which must be implemented consistently in Indonesia. The notary profession as an integral part of the Indonesian legal system requires a high level of responsibility, both individually and socially, especially in compliance with positive legal norms and the willingness to comply with the professional code of ethics.²According to Hariri, legal principles are aimed at the outward attitude of humans which prioritizes outward actions, where a person cannot be punished or given legal sanctions just because of what is thought or occurs in his mind (*cogitationis poenam nemo patitur*).³This emphasizes the importance of proper implementation in every legal action, including in the creation of authentic deeds by a Notary.

The authority of a Notary as a public official is obtained through attribution from the Notary Public Law (UUJN), where Notaries are appointed by the Minister and must take an oath/promise according to their religion before carrying out their duties. As regulated in Article 15 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014, the UUJN gives Notaries the authority to record all actions, agreements and determinations desired by the parties in an authentic deed so that it has perfect evidentiary power.⁴The Notary Code of Ethics established by the Indonesian Notaries Association is a mandatory rule that must be adhered to by all members to maintain the dignity of the profession and protect the public from abuse of professional expertise or authority. In carrying out their duties, notaries play a crucial role in determining whether an action can be documented in a deed. Sundah emphasized that before making this decision, notaries must consider and review all documents, examine evidence, and listen to the parties' statements,

¹ A Patra M Zen & Daniel Hutagalung, (2006). "Panduan Bantuan Hukum Di Indonesia," Jakarta: YLBHI Dan PSHK

² L Tedjosaputro, *Etika Profesi Notaris: Dalam Penegakan Hukum Pidana* (Bigraf, 1995), <https://books.google.co.id/books-id>.

³ Hariri Muhwan Wawan, "Introduction to Legal Science" (1st ed. Pustaka Setia. Bandung, 2012).

⁴ P M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Bina Ilmu, 1987), <https://books.google.co.id/books>.

taking into account all legal aspects, including potential future legal issues.⁵This decision must be based on clear legal reasons and be accountable to the parties, while remaining within the corridors specified in the UUJN and the Notary's Code of Ethics.

Errors in the process of creating an authentic deed can have various serious consequences, both for the Notary and the interested parties. Based on Law Number 2 of 2014, errors can occur in various aspects, ranging from errors related to the parties present (absence of the interested party or legal incapacity), errors related to the object of the deed (object unclear or contrary to law), errors related to the content of the deed (not in accordance with the agreement or incomplete), errors in the formality of the deed (inappropriate format or incomplete signature), to errors related to the notary protocol. These errors can result in the deed being legally flawed, losing its full evidentiary power, causing financial and non-financial losses to the parties, and can result in disciplinary, administrative, and criminal sanctions for the Notary. The phenomenon of errors in the preparation of authentic deeds is reflected in the case of Decision Number 166/PDT/2018/PT YYK, where a complex problem arose related to a simulated sale and purchase deed involving abuse of authority and causing harm to the parties concerned. This case demonstrates the importance of a Notary's caution and thoroughness in the process of preparing authentic deeds, considering that the impacts that can arise are not only administrative but can also harm the interests of the wider community. Mistakes or negligence made by a Notary, whether by a definitive Notary or a substitute Notary, will certainly have an impact on the Notary himself and can result in losses for the parties who entrust his legal interests.

The urgency of this research lies in the need to analyze in depth the legal responsibility of Notaries in the context of errors in the process of making authentic deeds, considering that authentic deeds have perfect evidentiary power and are the basis of legal certainty for the community. Identification of this problem is important considering the strategic role of Notaries in the Indonesian legal system and the impact that can be caused by errors in exercising this authority on legal certainty and the protection of community rights. This research aims to analyze the responsibility of notaries for errors in the process of making authentic deeds based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

⁵ Pingkan Sundah, "Tinjauan Yuridis Terhadap Tidak Dilaksanakannya Kewajiban Jabatan Notaris Menurut Undang-Undang No. 2 Tahun 2014," *Lex et Societatis* Vol. 1/No., no. 3 (2014): 39–49.

2. Research Methods

2.1.1. Approach Method

This research uses a sociological juridical approach method that identifies and conceptualizes law as a real and functional social institution in the real life system.⁶The legal aspect is used to analyze various laws and regulations related to the process of making authentic deeds, while the sociological aspect is used to analyze errors in the process of making authentic deeds carried out by Notaries. The use of the sociological legal approach method in this legal research is due to the problems being studied being closely related to legal and sociological factors. The object of the problem being studied does not only concern problems regulated in laws and regulations, but the problems being studied are also related to sociological factors in notarial practice. This research also uses a statute approach and a case approach as stated by Peter Mahmud Marzuki who explains that there are 5 (five) approaches that can be used in legal research.⁷The statutory approach is carried out by analyzing the rules and regulations related to the legal issue, while the case approach is used to analyze court decisions that are relevant to the research problem.

2.1.2. Research Specifications

The research specification used is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories then collected through data collected, processed, and arranged according to existing theories to obtain problem solving according to applicable provisions. Descriptive research is a study that is intended to provide data that is as accurate as possible with humans, conditions or other symptoms, and only explains the condition of the problem object without intending to draw generally applicable conclusions.⁸

2.1.3. Data Collection Method

This research uses primary and secondary data. Primary data is obtained directly from the first source related to the problem to be discussed through direct observation or observation in the field with the research subjects. Secondary data reviewed from its binding force is divided into primary legal materials, secondary legal materials, and tertiary legal materials.²⁸ Authoritative primary legal materials consist of: The 1945 Constitution of the Republic of Indonesia; Civil Code (KUHPPerdata); Criminal Code (KUHPidana); Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary; Decision number 166/PDT/2018/PT YYK; and other legal regulations related to this

⁶ S.H.I.M.H. Dr. Jonaedi Efendi & S.H.S.E.M.M.M.H. Prof. Dr. Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018), <https://books.google.co.id/books?id.>

⁷ Sugiyono, (2016). *“Metode Penelitian Kuantitatif Kualitatif Dan R&D,”* Bandung : Alfabeta.

⁸ Heribertus B Sutopo, *“Metodologi Penelitian Kualitatif”* (Surakarta: sebelas maret university press, 2002).

research.

Secondary legal materials are legal materials that can help analyze and understand primary legal materials in the form of textbooks, legal dictionaries, legal journals and commentaries on court decisions. While tertiary legal materials provide guidance or explanations to primary and secondary legal materials such as legal dictionaries, encyclopedias, magazines, and newspapers. ³² The data collection method is carried out using library techniques (document study) and interviews. Interviews aim to gather information about people's lives and their opinions. The interview techniques used are guided (structured) interviews and in-depth interviews. Library techniques are carried out by collecting (inventorying) legal materials that are considered related to the problem in the research, then clarifying the collected legal materials.

2.1.4. Data Analysis Methods

This research uses a qualitative data analysis method, namely the data obtained during the research process is then systematically arranged and analyzed so as to achieve clarity on the problems discussed, namely the Notary's Responsibility for Errors in the Process of Making Authentic Deeds According to Law Number 2 of 2014.

3. Results and Discussion

3.1. Form of Notary Responsibility for Errors in the Process of Making an Authentic Deed

The results of the study indicate that the responsibilities of a notary based on Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary have a close correlation with the duties and work of a notary. This relationship is caused because in addition to making authentic deeds, notaries are also assigned and responsible for registering and legalizing letters/deeds made privately. Article 1 and Article 15 of the Notary Position Law emphasize that the main duty of a notary is to make authentic deeds, where the authentic deed provides the parties who make it with perfect proof.

This provision is in line with Article 1870 of the Civil Code which states that an authentic deed provides perfect evidence for the parties and their heirs or those entitled to it. The importance of the notary profession lies in the authority granted by law to create perfect evidence, in the sense that what is stated in an authentic deed is essentially considered true.

The authority of a notary is not limited to making authentic deeds in the sense of *Verlijden* (drafting, reading and signing) and *Verlijkden* (making deeds in the form determined by law as referred to in Article 1868 of the Civil Code), but also based on Article 16 paragraph (1) letter d UUJN, namely the obligation of a notary to

provide services in accordance with the provisions of the law, unless there is a reason to refuse it. Notaries also provide legal advice and explanations regarding the provisions of the law to the parties concerned.

3.1.1. Notary's Civil Liability

Research reveals that notaries can be held civilly liable for errors in the authentic deed preparation process, which can result in compensation for the injured party. This civil liability arises when an error results in material loss for the parties using the notary's services.

3.1.2. Criminal Liability of Notaries

Notaries can be held criminally liable if their misconduct is categorized as a criminal offense, such as forgery of a deed. Criminal sanctions can be imposed on notaries as long as these limits are violated, meaning that in addition to fulfilling the definition of a violation in the Notary Law, it must also fulfill the definition in the Criminal Code. An examination of a notary must be able to prove the notary's mistake intellectually; in this case, the strength of legal logic is essential in the notary examination process.⁹

3.1.3. Administrative Responsibilities of Notaries

Notaries can be held administratively accountable, where the notary can be subject to administrative sanctions by the Notary Supervisory Board, such as a warning, suspension of office, or dismissal. The Notary Law regulates sanctions for violations committed by notaries against the Notary Law. These sanctions can be in the form of a deed made by the notary that does not have authentic force or only has the force of a private deed (Article 84) of the Notary Law. The notary himself can be given sanctions in the form of a verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal (Article 85) of the Notary Law.¹⁰

3.1.4. Categories of Notary Errors

The research identified several categories of errors that could lead to notaries being held accountable. First, procedural errors, namely, making an authentic deed that does not comply with the procedures stipulated in the Notary Law and other laws and regulations. Second, material errors, namely, making an authentic deed that does not conform to the actual facts or circumstances. Third, formal errors,

⁹ Habib Adjie, "Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No 30" (Tahun, 2004).

¹⁰ Ayu Riskiana Dinaryanti, "Tinjauan Yuridis Legalisasi Akta Di Bawah Tangan Oleh Notaris," *Journal of Petrology* 369, no. 1 (2013): 1689–99, <http://dx.doi.org/10.1016/j.jsames.2011.03.003><https://doi.org/10.1016/j.gr.2017.08.001><http://dx.doi.org/10.1016/j.precamres.2014.12.018><http://dx.doi.org/10.1016/j.precamres.2011.08.005><http://dx.doi.org/10.1080/00206814.2014.902757><http://dx.doi.org/10.1080/00206814.2014.902757>

namely, making an authentic deed that does not meet formal requirements, such as incomplete signatures, stamps, or dates.¹¹

The Notary Supervisory Board has the authority to investigate alleged notarial misconduct. If a notarial misconduct is categorized as a criminal offense, it will be processed through the courts. To prevent errors in the preparation of authentic deeds, notaries are required to always be careful and thorough in carrying out their duties, especially when preparing authentic deeds. Notaries must have a good understanding of the laws and regulations related to their duties, including the Notary Law and other laws and regulations related to the preparation of authentic deeds. Notaries must always keep abreast of legal developments and improve their knowledge and skills through education and training.¹²

3.2. Legal Implications of Cancellation and Revocation of Notarial Deeds

This study analyzes the legal implications regarding the cancellation and annulment of notarial deeds based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which can be categorized into three main forms.

3.2.1. Notarial Deeds Can Be Cancelled

The results of the study show that the cancellation of a notarial deed is a sanction against a legal act that contains a legal defect (cause of cancellation) in the form of cancellation of the legal act at the request of a certain party and the legal consequences of the cancellation are that the legal act has no legal consequences since the cancellation occurred, and the cancellation or ratification of the legal act depends on a certain party, which causes the legal act to be cancelled or ratified.¹³ When making a deed, especially if the parties appearing before a notary do not meet the subjective requirements, the deed can be annulled at the request of a particular person. A deed can be annulled due to the failure to fulfill the subjective elements in the agreement. Subjective elements in an agreement include capacity and agreement, where the agreement between the parties is the agreement of the will of both parties, the absence of coercion, and so on.

A notarial deed must contain an agreement between the parties who will make the agreement in the notarial deed. Their binding agreement occurs freely or with freedom. This freedom of agreement can occur explicitly (spoken words/written)

¹¹ Hatta Isnaini Wahyu Utomo, "Pelaksanaan Tugas Jabatan Notaris: Bahan Diskusi Dalam Persiapan Menghadapi Ujian Kode Etik Notaris," Makalah, Disampaikan Pada Acara Belajar Bareng Alumni, Universitas Narotama Surabaya, February, 2018.

¹² Mardiyah & Prof.Dr. I Ketut Rai Setiabudhi, "Sanksi Hukum Terhadap Notaris Yang Melanggar Kewajiban Dan Larangan Undang-Undang Jabatan Notaris," no. M (2018): 219–27.

¹³ Sumini & Amin Purnawan, "Peran Notaris Dalam Membuat Akta Perjanjian Notariil" 4, no. 4 (2017): 563–66.

or silently (with an attitude or gesture) without any element of coercion, error, or fraud between the parties. The main basis for making a notarial deed is that there must be a desire or will and request from the parties who appear before it. If there is no desire from the parties, the notary will never make the deed. Those who appear before a notary request that an action or legal act be formulated into an authentic deed in accordance with the notary's authority. The notary then makes the deed at the request or desire of the parties who appear before it.¹⁴

In drafting the deed, the parties voluntarily submit their wishes to the notary, who then transcribes them into the notarial deed in accordance with applicable law. Therefore, it can be concluded that a notary cannot draft a deed without the parties' request.

A person is said to be legally competent in civil law who is not currently under guardianship, namely a person who is an adult but is considered incapable because he is drunk, insane, or wasteful, in addition to not fulfilling the provisions in Article 39 of Law Number 2 of 2014 which regulates the subjective requirements for the parties and witnesses, namely: (a) The party appearing must be at least 18 (eighteen) years old or married and capable of carrying out legal acts; (b) The party appearing must be known to the notary or introduced to him by two identifying witnesses who are at least 18 (eighteen) years old or married and capable of carrying out legal acts or introduced by two other parties appearing. The effective date of cancellation in a notarial deed that can be canceled is that the notarial deed will remain binding on the parties concerned as long as there is no court decision that has permanent legal force, but the notarial deed becomes non-binding since there is a court decision that has permanent legal force stating that the notarial deed is invalid and non-binding.¹⁵

3.2.2. Notarial Deeds are Void by Law

The results of the study revealed that a notarial deed is null and void if a notarial deed does not fulfill the objective elements in the agreement, then the notarial deed can be null and void. Void by law is a civil sanction against a legal act whose cause of nullity contains a legal defect (cause of nullity), in the form of a legal act that has no legal consequences since the occurrence of the legal act or the legal act becomes invalid since the deed is signed and the legal act referred to in the deed is deemed never to have occurred.

¹⁴Mardiyah & Ibadudhi, "Sanksi Hukum Terhadap Notaris Yang Melanggar Kewajiban Dan Larangan Undang-Undang Jabatan Notaris."

¹⁵ Teresia Din, Lilik Mulyadi, & Udin Narsudin, "Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik," *Jurnal Penelitian Hukum Legalitas* 10, no. 2 (2017): 117–38.

Matters that can cause a notarial deed to be legally void are if it violates the provisions of the law as follows: (a) Violation of Article 16 Paragraph (1) Letter I in the form of not making a list of wills and not sending a report within the specified time period; (b) Violation of Article 16 Paragraph (1) Letter K regarding the notary's seal/stamp; (c) Violation of Article 44 which regulates the signing of notarial deeds and the notary's obligation to explain to the person appearing; (d) Violation of Article 48 which regulates the prohibition on changing the contents of the deed; (e) Violation of Article 49 which regulates the place of changing the contents of the deed; (f) Violation of Article 50 which regulates the deletion of words, letters and numbers; (g) Violation of Article 51 which regulates the notary's authority to correct typographical errors.

3.2.3. Notarial Deed which has the power of proof as a private deed

Article 1869 of the Civil Code determines the limitations of a notarial deed that has the power of proof as a private deed, which can occur if it does not meet the provisions because: (a) Defects in its form, however, such a deed still has the power of proof as a private deed if the deed is signed by the parties; (b) The relevant public official is not authorized; (c) Does not have the relevant public official. These provisions are expressly stated in certain articles which state that if violated by the notary, so that the notarial deed has the power of proof as a private deed, namely:⁷⁴ (a) Violates Article 16 Paragraph (1) Letter I; (b) Violates Article 16 Paragraph (7), Paragraph (8); (c) Violates Article 41; (d) Violates Article 52.

Violation of these provisions results in a notarial deed having the power of proof as a private deed, and thus it can be concluded that a notarial deed that has the power of proof as a private deed, if it is expressly stated in the relevant article, and which is not expressly stated in the relevant article, begins to apply as a private deed as long as there is no judge's decision that has permanent legal force, the deed remains valid and binding, and the notarial deed becomes non-binding after there is a judge's decision that has permanent legal force stating that the deed has the power of proof as a private deed.

Based on the above, the legal consequences of a deed containing elements of fraud in its creation are that the notarial deed can be canceled due to the lack of agreement in the creation of the deed. A notary is responsible for all deeds he makes. Therefore, notaries are required to always be careful and cautious in carrying out their duties, as stated in Article 65 of the UUJN and Article 3 of the Code of Ethics of the Indonesian Notaries Association (INI). If a notary makes a mistake or negligence in making a deed, he can be held accountable for the consequences of the mistake or negligence made by the notary. ⁷⁵

3.2.4. Legal Consequences for the Position of Notary

Imposition of Ethical Sanctions

Administratively, the law enforcement instruments in the law include preventive measures (supervision) and repressive measures (imposition of sanctions). Preventive measures are carried out through periodic inspection of notary protocols and the possibility of violations of the code of ethics in the implementation of the notary's position, while repressive measures are carried out through the imposition of sanctions by: (1) the Regional Supervisory Board, in the form of verbal warnings and written warnings, and has the right to propose to the central supervisory board in the form of temporary dismissal of 3 (three) months to 6 (six) months and dishonorable dismissal;⁷⁶ (2) the Central Supervisory Board, in the form of temporary dismissal, and has the right to propose to the minister in the form of dishonorable dismissal;⁷⁷ (3) the Minister, in the form of dishonorable dismissal and dishonorable dismissal. The imposition of sanctions in the form of dismissal of a notary is divided into 3 (three) categories, namely: temporary dismissal, honorable dismissal, and dishonorable dismissal with various conditions and reasons that have been regulated in the law.

a. Imposition of Legal Sanctions

Criminal sanctions are not regulated by the notary law, but notaries are subject to criminal liability if they commit a crime. A material violation of the notary profession, under the criminal article that can be imposed, is the accusation of falsifying documents. This crime carries a maximum penalty of six years' imprisonment. Notaries can also be subject to civil sanctions if their actions cause harm to another party or a third party.

b. Declining Public Trust in the Notary Office

Research shows that public trust in notaries is a reflection of their trust in the deeds they draft, which is why the notary position is often referred to as a position of trust. The current reality is that many notaries, who should provide legal certainty, are instead committing violations. Furthermore, the public also suffers losses as a result of negligence in drafting these deeds, namely a decrease in public trust in the notary position, resulting in a lack of legal certainty for the public.¹⁶

3.3. Preventing Errors in the Process of Making Authentic Deeds by Notaries

Based on the research results, Law Number 2 of 2014 concerning the Position of Notary Public comprehensively regulates the process of making authentic deeds, which must be carried out by notaries with care and precision. The research findings indicate that errors in the process of making authentic deeds can result in the deed being legally flawed and lacking perfect evidentiary force. The

¹⁶ Valentine Phebe Mowoka, "Pelaksanaan Tanggung Jawab Notaris Terhadap Akta Yang Dibuatnya," *Lex et Societatis*, Vol. II/No. 4 II, no. 4 (2014): 59–67.

identification results in this study found several types of errors in the process of making authentic deeds according to Law Number 2 of 2014, namely:

a. Errors Regarding the Parties Present

Research shows that the absence of interested parties is a fatal error in the preparation of authentic deeds. An authentic deed must be prepared in the presence of all interested and legally competent parties. The absence of one party can render the deed legally invalid. Other findings indicate that the legal incompetence of the parties present is also a serious problem. If one of the parties present during the preparation of an authentic deed is found to be legally incompetent, such as due to being a minor or under guardianship, the deed can be legally void.

An interview with Boyolali Notary Sri Wahyuni revealed that the deed is the lifeblood of a notary, and therefore, signing must be done in the presence of a notary. Sending a deed without a notary is highly undesirable and dangerous for the notary. If a client is known to be ill, the appointment can be rescheduled or checked to see if the client is able to sign, listen to the notary's explanation, and read the deed. Confirmation with the relevant doctor is necessary.

b. Errors Related to Deed Objects

Research has identified that unclear or uncertain objects of deeds are the main cause of legal defects in authentic deeds. Authentic deeds must contain clear and definite objects of deeds to avoid future doubt. Furthermore, objects that conflict with the law are also problematic. Authentic deeds must not contain objects that conflict with the law, such as objects prohibited from being sold.

c. Errors Related to the Contents of the Deed

Research findings indicate that the contents of a deed that do not conform to the agreement of the parties are a common error. An authentic deed must contain contents that conform to the agreement of the parties present. If there is a discrepancy between the contents of the deed and the agreement of the parties, the deed can be legally void. The study also found that incomplete deed contents are a serious problem. An authentic deed must contain all important and necessary information, such as the identities of the parties, the object of the deed, the date of the deed's creation, and so on. The lack of important information in the deed can cause the deed to be legally invalid.

d. Errors Related to Deed Formality

The research revealed that deeds not prepared in accordance with the specified format can cause legal defects. Law Number 2 of 2014 and other related regulations regulate the standard format for preparing authentic deeds. Failure to comply with the applicable format can result in the deed being legally defective.

Incomplete signatures from the notary and/or the parties are also a problem. An authentic deed must be signed by the notary and the relevant parties. Incomplete signatures can result in the deed being legally defective.¹⁷

e. Errors Related to Notary Protocol

The study found that the absence of a deed in a notary protocol constitutes a serious violation. Every authentic deed made by a notary must be included in the notary protocol. Notary protocols that do not comply with the provisions are also a problem, where notary protocols must be created and stored in accordance with applicable provisions. The results of the analysis indicate that errors in the process of making an authentic deed can have various consequences such as the deed being legally flawed and not having perfect evidentiary power, the parties can suffer financial and/or non-financial losses, the notary can be subject to disciplinary, administrative, and/or criminal sanctions.

To prevent errors in the process of making authentic deeds, the study recommends that notaries must have a deep understanding of Law Number 2 of 2014 and other related regulations. Notaries must always be careful and thorough in carrying out their duties, making authentic deeds completely, clearly, and in accordance with the agreement of the parties, and keeping notary protocols properly and neatly. The results of the interview with Boyolali Notary Sri Wahyuni emphasized that to avoid process errors as a notary, it is mandatory to be careful so that no process errors occur and to re-ensure that the documents are in accordance with the original, therefore clients are required to bring the original documents when signing.¹⁸

3.4. Analysis of the Case Study of High Court Decision Number 166/PDT/2018/PT YYK

The results of the analysis of the court decision case number 166/PDT/2018/PT YYK show the complexity of the problem of errors in the process of making authentic deeds. This case involves the plaintiff (Mrs. EP) as the legal owner of a plot of land and buildings recorded in the Certificate of Ownership Number 1766 located in Wonokromo Village, Pleret District, Bantul Regency, covering an area of 264 m² recorded in the name of EP according to the Measurement Letter Number 0933/Wonokromo/2003.

¹⁷ Sumini & Purnawan, "Peran Notaris Dalam Membuat Akta Perjanjian Notariil."

¹⁸ Fitri Ayuningtiyas, Aynul Khusnah, & Adelia Wahyuningtiyas, "Efektivitas Undang-Undang Dasar Tahun 1945 Terhadap Mekanisme Checks and Balances Dan Pemakzulan Presiden Atau Wakil Presiden Dalam Perspektif Hukum Tata Negara," *Jurnal Penegakan Hukum Dan Keadilan* 4, no. 2 (2023): 14–26, <https://doi.org/10.18196/jphk.v4i2.17556>.

a. Case Chronology

The findings of the case show that in early 2008, the Land Title Certificate Number 1766 was borrowed by Defendant III (SRI), who is a business partner of the Plaintiff. The Plaintiff gave permission to Defendant III to borrow the certificate with the aim of seeking a loan from Defendant II (Mr. SA) with the Plaintiff's land as collateral. Defendant III promised the Plaintiff that if there was a disbursement from Defendant II, the Plaintiff would be given a certain amount of funds. The analysis results show that due to the persuasion and promises of Defendant III, the Plaintiff agreed to make a sale and purchase deed for his land. The Plaintiff then made a notarial deed No. 141/2008 dated June 20, 2008 regarding the Sale and Purchase Deed made before the Notary/PPAT of Bantul Regency RAT (Co-Defendant I) where the Plaintiff was the Seller and Defendant I was the attorney of Defendant II for a price of Rp. 14,000,000.

b. Legal Problem Analysis

The research identified that notarial deed No. 141/2008 was a "simulation deed" as a result of the legal relationship of debt between Defendant III and Defendant II. The findings showed that in reality there was no intention or agreement to buy and sell at the beginning, there was never a cash, clear and real land buying and selling process, there was never any payment from the buyer regarding the agreed price in full, and the owner and his family continued to live in the object. The results of the analysis showed that there was Abuse of Circumstances ("Undue Influence" or "misbruik van omstandigheden") which is known in civil law. Defendant II as a creditor has taken advantage of the plaintiff/debtor's weak position where he was in dire need of money for urgent needs, so he was forced to agree to the conditions set by the creditor.¹⁹

c. Court ruling

The verdict results indicate that the lawsuit was accepted and granted in its entirety. The court stated that the plaintiff is the legal owner and has full rights to the plot of land, stated that the legal relationship between Defendant II and Defendant III is a debt, and declared VOID or INVALID and NOT LEGALLY ENFORCEABLE against notarial deed No. 141/2008.

d. Legal Certainty Analysis

The analysis results show that the decision reflects legal certainty in terms of legal certainty. Legal certainty means that every legal norm must be clearly formulated regarding the sentences contained therein so as not to result in different interpretations (Riduan Syahrani, 1999). Legal certainty is not only in the form of

¹⁹ Law of the Republic of Indonesia, "Law of the Republic of Indonesia Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary Public," BPK.Go.Id Regulation 1, no. 1 (2009): 65.

articles in the law but also the consistency of judges' decisions between one judge's decision and another judge's decision for similar cases (Peter Mahmud Marzuki).

e. Position of Notary in Case

Research findings indicate that notaries are often named as defendants by other parties who feel that the legal actions they carry out in the deed are categorized as notary legal actions or acts together with other parties. In the context of notarial law, the notary's task is only to formulate the wishes of the parties in the form of an authentic deed, taking into account applicable law. The results of interviews with Sumedang Regency Notary Rieva revealed that if the deed made by the notary is problematic by the parties themselves, then the notary does not need to be involved in this matter, because the notary is not a party to the deed. However, in this case the notary should also realize that the nominal value of the sale and purchase is unreasonable, very cheap, only Rp. 14,000,000, so that the notary becomes a co-defendant. To prevent notaries from being named as defendants, the study recommends that notaries must have a deep understanding of Law Number 2 of 2014, always be careful and thorough in carrying out their duties, make authentic deeds completely and clearly according to the agreement of the parties, and keep notary protocols properly and neatly.

4. Conclusion

Based on the results of research and discussion regarding the notary's responsibility for errors in the authentic deed-making process, it can be concluded that notaries have comprehensive legal responsibilities covering three main aspects, namely civil, criminal, and administrative responsibilities. Civil liability arises when a notary's error causes material losses to the parties using his services, while criminal liability applies if the error is categorized as a criminal act such as deed forgery. Administrative responsibility is realized through sanctions imposed by the Notary Supervisory Board in the form of a warning, suspension of office, or dismissal. Errors in the authentic deed-making process can be categorized into five types: errors related to the parties present, errors related to the object of the deed, errors related to the content of the deed, errors in the formality of the deed, and errors related to notary protocol. The legal implications of these errors result in the deed being canceled, null and void by law, or only having evidentiary force as a private deed. The analysis of the case of the High Court Decision Number 166/PDT/2018/PT YYK shows that a simulated deed made without the actual will of the parties can be declared null and void and has no legal force, and provides legal certainty for the injured party through a firm court decision that is consistent with the principles of justice.

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