

## Notary's Responsibility for Deeds Made With Fake Documents Provided by The Parties

Lismi salis<sup>1)</sup> & Shallman<sup>2)</sup>

<sup>1)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [lismisalis12@gmail.com](mailto:lismisalis12@gmail.com)

<sup>2)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [Shallman@unissula.ac.id](mailto:Shallman@unissula.ac.id)

**Abstract.** *In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary In Article 1 number 1 of the UUJN Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. A Notary in making a deed sometimes without his knowledge there is false information given by the parties, which then becomes the basis for making an authentic deed. This study aims to analyze and answer the problem regarding the responsibility of a notary for deeds made with false documents provided by the parties in the process of making a notarial deed according to the Notarial Law, and how notarial deeds made based on false documents brought by the person appearing have legal impacts. This study uses the Normative legal research method. Legal materials from primary, secondary, and tertiary legal materials are used as research sources, and the data collected will be analyzed descriptively qualitatively. The results of the study show that notaries are responsible according to the actions they have taken if they are proven to have committed violations in carrying out their duties. They will be responsible in terms of administrative law, civil law or criminal law.*

**Keywords:** *Notary, Responsibility, Deed*

### 1. Introduction

Notary comes from the word Nota Literaria, which is a written sign or characteristic used in writing or explaining sentences from sources. Initially, the position of notary was a public official (Private Notary) who was assigned by the general authority to serve the community with authentic evidence that provides

certainty of civil relations.<sup>1</sup>Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. (Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary in Article 1 number 1 UUJN). Public official is a translation of openbare Ambtenaren which is in Article 1 number 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.<sup>2</sup>The existence of notaries today is based on the community's need for legal documents as binding evidence.

Deeds can be classified into 2 (two) types, first an authentic deed is a deed made based on laws and regulations by or before an authorized public official. An authentic deed clearly determines the rights and obligations to guarantee legal certainty and avoid disputes, a notary in making a deed must be in accordance with the events, circumstances, even legal acts carried out by the person appearing so that the deed can guarantee legal certainty.<sup>3</sup>Second, a deed under hand is a letter or writing made by the parties without the intervention of public officials and laws and regulations, in Article 1874 of the Civil Code. What is considered a private writing is a deed signed under hand, a letter, a list, a household letter and other writings made without the intermediary of a public official. A notarial deed is made to protect the rights and obligations, stability, and legal protection of the parties. In essence, a notarial deed contains formal truth in accordance with what the parties have told the notary. The notary is responsible for including in the deed what they actually understand according to their wishes and informing the parties about the contents of the deed. The statements or statements of the parties are written in the notarial deed.

As for one example of the case of the Supreme Court of the Republic of Indonesia Decision Number 1209 K/Pid/2022, the Notary was sentenced based on Article 264 Paragraph (1) in conjunction with Article 55 Paragraph (1) ke-1 of the Criminal Code, where Madiyana Herawati, SH, Sp.N. Together with Fransiska Ely Wulandari, SE have been proven legally and convincingly guilty of committing a crime "Having committed or participated in committing an act, namely making a fake authentic deed or falsifying an authentic deed that can give rise to a right.

The deed that is made is a partij deed, which contains a story about what happened because of the actions carried out by the parties before a notary.<sup>4</sup>which the contents of the deed are not the will of the Notary but investigators often argue and then accuse the notary of having ordered the client

---

<sup>1</sup>Muhammad Syahrul B., 2019, "The Position of Notaries as Public Officials in the Perspective of the Notary Law", Journal of Law and Notary, Vol 3 No 1, p. 79.

<sup>2</sup>Ghansham Anand, 2018, Characteristics of Notary Positions in Indonesia, Prenamedia Group, Jakarta, pp. 13-14.

<sup>3</sup>Adinda Nirantara & Liliana Tedjosaputro, 2022, "Responsibility of Notary Public Who Makes Incomplete Minutes of Deeds Towards Copies of Deeds Issued", Jurnal Notary Law Research, Vol. 03 No. 02, p. 2.

<sup>4</sup>Udin, Narsudin, 2022, QnA on the Substance of Notaries and PPAT in Practice, Nas Media Pustaka Indonesia, p. 184.

or the person appearing to include false information in the deed. The making of a notarial deed based on a false statement or information is one of the problems related to the duties of a notary. The main question is, can a notary be held criminally responsible for making a deed based on false information? Criminal acts related to the position of a notary are not regulated by the UUJN in this case. Based on this background, the author wants to examine the Responsibility Of A Notary Towards Deeds Made With Fake Documents Provided By The Parties.

## **2. Research Methods**

The type of research used in this thesis is Normative Legal Research. Normative Legal Research, namely using legal sources in the form of statutory regulations, court decisions/rules, contracts/agreements/deeds, legal theories, and the opinions of scholars. The approach method used is the Law Approach, namely Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Position of Notary and the case approach. The data sources obtained come from Primary, secondary and Tertiary data. Data collection methods include Document Studies. The data analysis method used is descriptive using a qualitative paradigm, namely providing an explanation from the results of the document study regarding notary responsibilities, where the author will provide a description or explanation of the subject and object of the research which will be analyzed, then from the results of the analysis a conclusion will be obtained, meaning that the data obtained will be explained and presented in detail and in depth.

## **3. Results and Discussion**

### **3.1. Notary's Responsibility for Deeds Made with Forged Documents Provided by the Parties**

#### **Notary's Responsibilities in State Administration**

Administrative Law regulates how the government exercises its authority to provide services that improve public welfare. The subject of government does develop further than government positions structurally. Basically, public legal authority is always associated with public office, which is an organ of government and exercises authority in government functions, all of which are carried out for the public interest or public service. A Notary must comply with the Notary Law (amendment of the UUJN) and the Notary Code of Ethics when carrying out his duties, otherwise the dignity and professionalism of the notary will be lost.

As a job that handles technical legal issues, notaries must actively participate in the development of national law. Therefore, notaries must always remember the principles of the nation's struggle, especially in order to improve public services. Notaries must continue to follow the development of national law so that they can carry out their profession professionally.

If the formal requirements, namely the notary appointment procedure, are not met, the Notary Appointment Decree by the Ministry of Law and Human Rights does not meet the legal requirements. To be appointed as a notary, a person must meet one of the requirements listed in Article 3 of the Notary Law. One of them is having a law degree and graduating from level two of notary.

In 1987, the Department of Justice, now the Department of Law and Human Rights, stipulated that in order to be appointed as a notary, in addition to fulfilling the requirements stated in Article 3 of the Law on Amendments to the UUJN, a person must also prove that they have passed the code of ethics exam held by the Indonesian Notary Association (INI), which is authorized by the INI by the Department of Law and Human Rights.

Law Number 30 of 2004 Concerning the Position of Notary, stipulated on November 6, 2004 in the State Gazette of the Republic of Indonesia Year 2004 Number 117 (UUJN) together with Law of the Republic of Indonesia Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary, stipulated on January 15, 2014 in the State Gazette of the Republic of Indonesia Year 2014 Number 3 (Law on Amendments to UUJN), contains As a trusted job supervised by the government, a notary is also required to have an attitude and behavior that is not reprehensible at a higher level than that required by the general public. Currently, the attitude and character of a notary are very important. This benchmark is given by the Indonesian Code of Ethics.

The Notary Code of Ethics is regulated by the notary professional organization in this case the Indonesian Notary Association (INI) at the extraordinary congress of the Indonesian Notary Association held in 2015. There are 2 positions of the code of ethics for notaries:<sup>5</sup>

- a. Due to the nature and purpose of a notary's work which is very focused on legalization, they can serve as the primary legal basis for determining the status of property, rights and obligations of parties using the notary's services.
- b. It is very important for the notary world to have a good and contemporary code of professional ethics so that injustice does not occur because the status of property provides rights and obligations that are not in accordance with the principles of law and justice, which can disrupt the personal rights of people seeking justice.

There are 5 (five) sanctions in the Notary's code of ethics which are arranged hierarchically based on the lowest level of violation to the most serious level of violation which are imposed if a notary commits a violation of the code of ethics, according to Article 85 of the UUJN concerning the provisions as referred to in Article 7, Article 15 paragraph (1,2 and 3), Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph

---

<sup>5</sup>Latifah, 2021, "Notary's Responsibility in Violation of the Notary Code of Ethics", Jurnal Officium Notarium, Vol 1, No 1, pp. 145-146

(1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, and/or Article 63, sanctions can be imposed in the form of:

- 1) Reprimand
- 2) Warning
- 3) Temporary suspension from association membership
- 4) Honorable dismissal from association membership
- 5) Dishonorable dismissal from association membership.

Basically, the Minister of Law and Human Rights has the authority to supervise, examine, and educate notaries. To do this, the minister forms the Notary Supervisory Council and the Notary Honorary Council, each with specific duties.<sup>6</sup>

The notary is responsible for any intentional errors or violations in making an authentic deed. On the other hand, if there is an element of error or violation that occurs from the party appearing, the notary is responsible in accordance with the regulations. This is because the notary only records what is conveyed by the party to be documented. False information provided by parties is their own responsibility.<sup>7</sup>In other words, a notary can be held accountable if there is fraud or deception originating from a notary. As long as the notary is impartial and careful when working, they will feel safer when working. However, in the making of the Deed of General Meeting of Shareholders, the Notary is fully responsible.

#### **a) Forms of Responsibility from a Civil Law Perspective**

Liability regulated in civil law, namely the provisions of Article 1365 of the Civil Code, 1366 of the Civil Code, and 1367 of the Civil Code. Article 1365 of the Civil Code stipulates that "every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss", Article 1366 of the Civil Code states that "Everyone is responsible not only for losses caused by his actions, but also for losses caused by his negligence or lack of care", Article 1367 states that, "a person is not only responsible for losses caused by his own actions, but also for those caused by the actions of people who are his responsibility or caused by goods under his supervision".

---

<sup>6</sup>Irfan Riyadi, 2020, "The Authority of the Notary Honorary Council in the Perspective of State Administrative Law", *Jurnal Rechtsvinding*, Vol. 9, No. 3, p. 484.

<sup>7</sup>Haidar Noor H., 2018, *Notary's Liability in Making Deeds as a Result of False Documents Brought by the Applicant and the Legal Consequences of the Deed (Case Study in Yogyakarta City)*, thesis written at the Faculty of Law, Islamic University of Indonesia, page 74.

According to Article 1365 of the Civil Code, it can be interpreted that in legal science, there are three (three) categories of unlawful acts, namely unlawful acts committed by a person that have caused harm to another person.<sup>8</sup>

- a. Unlawful acts due to intent
- b. Unlawful act without fault (without any element of intent or negligence)
- c. An unlawful act due to negligence.

Article 1365 of the Civil Code above regulates liability for unlawful acts, either due to action (*culpa in commitendo*) or due to failure to act (*culpa in omissendo*). Article 1366 of the Civil Code is more directed at claims for liability caused by negligence (*onrechtmatigenalaten*).

#### **b) Forms of Responsibility in Terms of Criminal Law**

A Notary who has committed the criminal act of Deed Forgery or made a fake deed as intended in Article 263, Article 264, Article 266, can be explained as follows:<sup>9</sup>

- a. Article 263 paragraph (1)
  1. Forgery is when a letter or writing is composed falsely with the intention of showing that the letter came from someone other than the author. This is known as material forgery (*materiele valsheid*). Although the letter is forged, it still contains contents that are not true and are not original. Intellectual forgery, also known as "*Intellectual Valsheid*", occurs when a letter is made false because its contents are contrary to the truth. Material forgery is the act of falsely representing that a letter, either in its entirety or only from the signature or contents, comes from a person whose name is listed under the writing, either in the writing or the letter.
  2. Forgery means altering a letter or writing without permission by changing the signature and content, whether it was previously false or true. Such changes may include:
    - a) deletion of sentences, words, numbers, signatures,
    - b) addition with one sentence, word or number
    - c) replacement of sentences, words, numbers, dates, and/or signatures. The act of changing causes changes to its appearance and content as well as its original purpose. Thus the act of changing disrupts, rapes the original letter or writing.
- b. Article 264 paragraph (1) to 1 of the Criminal Code, namely: is a provision that is more severe than Article 263 paragraph (1) of the Criminal Code because the act of forgery was carried out on an authentic deed, and this shows as if

---

<sup>8</sup>Wayan Paramarta, et al., 2017, Notary's Accountability Regarding the Truth of the Substance of Authentic Deeds, *Jurnal Rechtide*, Vol 12, No 2, p. 277.

<sup>9</sup>Haidar Noor H, *Op.Cit*, pp. 85-87.

there was an original act because forgery only consists of forging a letter, whereas imitation of making a fake letter is not included in it.

- c. Article 266 paragraph (1) of the Criminal Code, a person who appears before a Civil Servant provides an explanation that must be included in the deed that must be made by the Civil Servant, which information is not true. According to Article 263 paragraph (1) of the Criminal Code, the civil servant does not commit intellectual forgery, which means making a fake letter. And in this case, there is no participation (Article 55 Paragraph 1). Ordering someone to enter false information into a real deed is an act prohibited by this article. While a fake authentic deed is intended to show that its content is not based on the truth, but is contrary to the truth. This deed must show which events prove the event, which must be explained by the person appearing. then the event is not true, contrary to the truth because the statements are false.

Notaries are responsible for bearing compensation for mistakes they have made, the party who is harmed by the violation or mistake can file a claim or lawsuit for compensation, costs and interest to the notary concerned through the court. On the other hand, if the party or the person appearing makes a mistake or violation, the Notary cannot be held responsible either civilly or criminally as long as the Notary carries out his duties according to the regulations. This is because the Notary only records what is conveyed by the party to be written in the deed. One party is responsible for incorrect information, Supreme Court Decision Number 702 K / Aip / 1973, is of the opinion that the Notary's function is only to record and write what is desired and stated by the parties appearing before the notary. If in making the authentic deed the parties show supporting documents, then the Notary is not obliged to materially investigate the documents and matters stated by the parties appearing. The above decision explains that the Notary's duty is to guarantee that the person appearing is correct in stating what is written in the deed, however the Notary is not responsible for evaluating the material truth of the data or information explained by the parties in their documents.<sup>10</sup>

A notary cannot do anything if he is referred to as "a person who orders the insertion of false information into an authentic deed..." because:<sup>11</sup>

- a. The deed made is known as a *partie deed* or *party deed*, which is made by a notary at the request of the parties to record or write down everything discussed by the parties relating to the legal action.
- b. "the person who orders it to be done" according to Article 55 paragraph (1) 1 of the Criminal Code, namely those who carry out all the elements of the crime, meaning:

---

<sup>10</sup>Nisa, Naili Zahrotun. 2021. The Urgency of Including an Exoneration Clause in a Party Deed (*Partij Acte*), Master of Notary Thesis, University of Surabaya, page 75.

<sup>11</sup>Hilda Sophia W., 2015, Criminal Liability of Notaries in Making Deeds Based on False Information Related to Law Number 30 of 2004 Concerning the Position of Notary in conjunction with Law Number 2 of 2014 and the Criminal Code, *Jurnal Wawasan Hukum*, Vol 32, No 1, p. 69.

- If it is related to the position of the notary who makes the deed of partie, it is impossible and excessive because the notary will not ask the party to include false information in the actual deed. On the contrary, the party asks the notary to make the deed.
- If a Notary is referred to as "a person who orders to place false information into an authentic deed...", it cannot be done by a Notary because there are two parties who contact the Notary to make the deed, which is an agreement of both parties to be stated in the deed. In addition, as an authorized official, a notary is the person assigned to make the deed.

However, in the role of a notary as a public official, a deed of release or official deed, made by a notary based on his/her experience, such as a deed of minutes of a general meeting of shareholders of a limited liability company, a deed of registration or inventory of inherited assets, and a deed of drawing lots, can be made false by a notary due to deliberate action, either in the form of negligence or oversight or error.<sup>12</sup>. Regarding this matter, notaries can be threatened with criminal penalties for violating the provisions of Article 264 paragraph (1) 1 of the Criminal Code, namely forgery of authentic deeds with the threat of a maximum prison sentence of eight years.

#### **4. Conclusion**

In carrying out his/her position, a notary has responsibilities related to the deeds he/she has made, namely that he/she can be held responsible for Administration, Notary Liability from a Civil perspective, or from a Criminal perspective. A notary who intentionally provides false information in making a deed can be threatened with a criminal penalty for violating the provisions of Article 264 paragraph (1) 1 of the Criminal Code, namely Forgery of authentic deeds with a maximum prison sentence of eight years. However, in the case of a deed containing information according to the wishes of the party who made or ordered the deed to be stated in the Notarial deed, when the Notary really did not know that there was a falsified document, the Notary cannot be blamed for entering false information into the deed, and cannot be held responsible for the deed made in his/her presence. It is expected that notaries in making deeds ensure that the deeds they make are in accordance with applicable laws and do not conflict with statutory regulations. Notaries must be more careful, precise and thorough in the process of making deeds and providing legal advice (legal counseling) to the parties in accordance with their notarial knowledge.

---

<sup>12</sup>ibid, p. 70.



## 5. References

### Journals:

- Adinda Nirantara & Liliana Tedjosaputro, 2022, "Tanggung Jawab Notaris Pembuat Minuta Akta Yang Tidak Lengkap Terhadap Salinan Akta Yang Dikeluarkan", *Jurnal Notary Law Research*, Vol. 03 No. 02.
- Ghansham Anand, (2018), *Karakteristik Jabatan Notaris Di Indonesia*, Jakarta: Prenamedia Group.
- Haidar Noor H., 2018, *Pertanggungjawaban Notaris Dalam Pembuatan Akta Sebagai Akibat Dokumen Palsu Yang Dibawa Oleh Penghadap Dan Akibat Hukum Terhadap Aktanya (Studi Kasus Di Kota Yogyakarta)*, tesis yang di tulis pada Fakultas Hukum Universitas Islam Indonesia.
- Hilda Sophia W., 2015, *Pertanggungjawaban Pidana Notaris Dalam Pembuatan Akta Yang Didasarkan Pada Keterangan Palsu Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Jo Undang-Undang Nomor 2 Tahun 2014 Dan Kuhp*, *Jurnal Wawasan hukum*, Vol 32, No 1.
- Irfan Riyadi, 2020, "Kewenangan majelis Kehormatan Notaris Dalam Perspektif Hukum Administrasi Nrgara", *Jurnal Rechtsvinding*, Vol. 9, No. 3.
- Latifah, 2021, "Tanggung Jawab Notaris Dalam Pelanggaran Kode Etik Notaris", *Jurnal Officium Notarium*, Vol 1, No 1.
- Muhaimin, (2020), *Metode Penelitian Hukum*, Mataram: University Press.
- Muhammad Syahrul B., 2019, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris", *Jurnal Hukum dan Kenotariatan*, Vol 3 No 1.
- Nisa, Naili Zahrotun. 2021. *Urgensi Pencantuman Klausul Eksonerasi Pada Akta Pihak (Partij Acte)*, Tesis Magister Kenotariatan Universitas Surabaya.
- Udin, Narsudin, (2022), *QnA Substansi Notaris dan PPAT Dalam Praktik*, Nas Media Pustaka Indonesia.
- Wayan Paramarta, dkk, 2017, *Pertanggungjawaban Notaris Berkenaan dengan Kebenaran Substansi Akta Otentik*, *Jurnal Rechtide*, Vol 12, No 2.