

Notary's Responsibility Regarding Deeds Which Do Not Fulfil Material Elements and Truth

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Abstract. *Notary is a very important profession to help provide legal certainty to the community in the form of providing legal products in the form of authentic deeds. The authentic deed cannot be separated from the information received by the notary at the time of making the deed, but if the information in the deed is not in accordance with the truth and can harm the parties, of course the notary must be responsible for his actions, for that in this study has the aim to study and analyze the responsibility and legal consequences of the making of Notarial deeds that do not fulfill material truth, especially in Pati Regency. The type of research used in this study is a qualitative approach method, which is a study to explore and understand the meaning that a number of individuals or groups of people consider to come from social or humanitarian problems. The research used to investigate, find, describe, and explain the quality or specialty of social influences that cannot be explained, measured or described through a quantitative approach, while the approach method used by the author is empirical legal or sociological legal research, namely a legal research method that seeks to see the law in a real sense or can be said to see, examine how the law works in society with data collection process through observation and interviews. Based on the research results, it was concluded that the responsibility carried out based on one of the notary cases in Pati Regency is criminal responsibility for the material truth in the deed he made, as well as being responsible for the Notary's job regulations (UUJN) for the material truth in the deed he made, Secondly, the legal consequences in the case that ensnared the notary are legal consequences in the form of sanctions, which are not desired by the legal subject (unlawful acts) by being proven by a court decision in the form of imprisonment and changes to the deed he made are considered null and void by law.*

Keywords: *Consequences; Legal; Notary; Responsibility.*

1. Introduction

A notary is a public official who has one of the authorities in making authentic deeds as referred to in Law Number 2 of 2014 which was previously regulated in Law Number 30 of 2004 stating that a 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. According to Article 1868 of the Civil Code, an Authentic Deed is a deed made in a form determined by law or made before an authorized public official at the place where the authentic deed is made.

An authentic deed essentially contains formal and material truths that are in accordance with what the parties have informed the Notary. The Notary has an obligation to include that what is contained in the Notarial deed has truly been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial deed are clear, and providing access to information, including access to related laws and regulations for the parties signing the deed, so that the parties can freely determine and agree to the contents of the Notarial deed that they will sign.¹

The material force contained in a notarial deed refers to the material requirements contained in an agreement regulated in Article 1320 of the Civil Code concerning the legal requirements of an agreement. According to Article 1868 of the Civil Code, an Authentic Deed is a deed made in a form determined by law or made before an authorized public official at the place where the deed was made. The process of making and signing an authentic deed is carried out before a notary. This authentic deed can help the holder or owner if they are involved in a legal case.²The material truth in a deed is very important so that the Notary must be able to seek material truth from the parties by providing legal counseling and education on the deed to be made with the aim of protecting the interests of the parties, if the material truth is not fulfilled due to the parties themselves or from the Notary himself, it will result in unlawful acts that lead to disputes by the parties and the Notary.³The judiciary has a very important position and role in accepting, adjudicating and deciding every case submitted to it. The cases submitted to him consist of civil cases, criminal cases, state administrative cases and other cases.⁴

Regarding deciding a case, the court must consider the evidence submitted by the parties and the suspect. The evidence is not only listed in the lawsuit, but also considers other evidence, such as witnesses, written evidence, and others. The

¹Dedy Pramono, 2015, The Evidential Power of Deeds Made by Notaries as Public Officials According to Civil Procedure Law in Indonesia, *Lex Jurnalica*, Volume 12 Number 3 December 2015, P. 249

²Law Number 2 of 2014 Concerning the Position of Notary

³James Yosep Palenewen, 2024, Responsibilities and Roles of Notaries, *Widina Medina Utama*, Bandung. P. 75

⁴Haryanto, 2018, *The Justice System in Indonesia in Theory and Practice*, Prenada Media, Depok, p. 57

evidence must be assessed by the judge in deciding each case submitted to him. In assessing the evidence, the judge is bound by legal norms and various theories related to proof.⁵In the Civil Procedure Law, there are several types of evidence, as specified in Article 1866 of the Civil Code (Civil Code), where the evidence includes written evidence, evidence with witnesses, allegations, confessions and oaths. A letter is written evidence containing writing in a statement of someone's thinking power which will be used as evidence. A deed is written evidence that is signed and contains events that form the basis of an agreement, or is the basis for rights with provisions from the beginning when this deed was deliberately issued to serve as proof.⁶ A deed as written evidence in certain cases can be used as strong evidence for the parties bound by it. One of the deeds made as valid evidence is an Authentic Deed.⁷

Pati Regency is one of the regencies located in Central Java where there are still many agricultural lands and even customary land letter C which makes land problems can be said to be in the high category. The community in Pati Regency generally requires the services of a Notary and PPAT as an official who makes deeds in resolving the legality of their land. However, it is very unfortunate if there are notaries and PPATs in Pati Regency who are negligent in making deeds that do not meet the elements materially and include violations and deviations when carrying out their duties which of course can be detrimental to the parties.

2. Research Methods

The author in compiling this research uses the Empirical Law research method. The empirical research method is a method that provides a framework of evidence to ensure the truth of something and functions to be able to see the law in a real sense and examine the process of how a law works in the community environment.⁸This type of research uses a qualitative approach. The qualitative approach emphasizes the analysis of inductive thinking processes related to the dynamics of the relationship between the phenomena being observed, and always uses scientific logic. Qualitative research aims to develop the concept of sensitivity to the problems faced, explain the reality related to the exploration of theories from below and develop an understanding of one or more of the phenomena faced.⁹

The data source used in this study is Primary Data, namely this study was produced

⁵Salim HS and Erlies Septiana Nurbani, 2016, Application of Legal Theory in Dissertation and Thesis Research (Third Book), RajaGrafindo Persada, Jakarta, p. 215.

⁶Komang Ayuk Septianingsih, et al., 2020, The Power of Authentic Deed Evidence in Proving Civil Cases, Journal of Legal Analogy, Volume 2 No. 3 2020, p. 336-337.

⁷Syahrul Borman, 2019, The Position of Notaries as Public Officials in the Perspective of the Notary Law, Journal of Law and Notary, Volume 3 No. 1 2019. P. 80

⁸Mukti Fajar ND and Yualianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p. 154.

⁹Arif Furchan, 1992, Introduction to Qualitative Research Methods, Usaha Nasional, Surabaya, p. 21.

through interview results. The parties involved in this study are Notaries and Honorary Council in Pati Regency.

Data analysis in this study uses a descriptive analysis method, with the hope that researchers in analyzing want to provide a description or explanation of the subject and object of research as the results of the research they have conducted and the data analysis used is a qualitative approach to primary and secondary data.

3. Results and Discussion

3.1. Notary's Responsibility for Deeds That Do Not Fulfil Material Elements and Truth

Notary can be said to be one of the professions with special expertise that requires broad knowledge, as well as high responsibility to serve the public interest and the main task of a notary is to create written and authentic legal relationships between parties who require notary services.¹⁰

The role and function of notaries in the development of national law are increasingly broad in their development so that the great authority possessed by a notary also has a great responsibility in carrying out his profession, thus notaries must be required to work professionally based on a code of ethics in every action taken by a notary in the legal realm assigned to him, namely making deeds desired by the parties.¹¹

Notaries have the authority to make authentic deeds as follows: as stated in Article 15 paragraph (1) UUJN, in making a deed, a Notary must pay attention to the data in the field and be based on existing facts. Another important thing for a Notary in carrying out his/her obligations which often raises questions and deviations in its implementation is related to the reading of the deed as regulated in Article 16 paragraph (1) of Law Number 2 of 2014 where the Notary is required to read the Deed in front of the parties in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Will Deed underhand, and signed at that time by the party in the party, witnesses, and Notary. In its implementation, there is often a disharmony or difference between Article 16 paragraph (1) letter m UUJN and the reality, where many Notaries delegate the reading of the deed to their staff to read the deed in front of the parties in the party in the party, even handing over to a third party in signing the deed. whereas in the UUJNP, the person who is required to read the deed in front of the person appearing is the Notary himself.¹² When a Notary does not carry out his/her authority and obligations,

¹⁰Ghamsan Anad, 2018, Characteristics of Notary Position. Prenada Media Group. Jakarta. P. 44

¹¹Anke Dwi Saputro, 2008, The Identity of Indonesian Notaries Past, Present and Future: 100 Years of the Indonesian Notary Association. PT. Gramedia Pustaka, Jakarta. p. 40

¹²Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary

he/she will receive strict sanctions as regulated in the Law or the Notary Code of Ethics.¹³

The responsibility of a Notary for the deed he has made is to respect every step taken by the Notary Supervisory Board to discipline by giving appropriate sanctions to the Notary, and also for violations of the provisions for making a deed which results in the deed only having the power of proof as a private deed can be a reason for the party who suffers a loss to demand reimbursement of costs, compensation, and interest from the Notary. That the main authority of a Notary is to make a Deed, and for that the Notary is also obliged to be responsible for the deed he has made. The responsibility carried out by a notary according to UUJN Articles 84 and 85 which are:

a. Civil liability

Civil liability in notarial errors in the form of reimbursement of costs, compensation based on a legal relationship between the Notary and the Parties appearing before the Notary,⁴ if there is a party who feels disadvantaged as a direct result of a Notarial Deed, then the person concerned can sue the Notary in civil court, thus the claim for reimbursement of costs, compensation and interest against the Notary is not based on the assessment or position of evidence that has changed due to violating Article 84 of the UUJN, but can only be based on the legal relationship that exists or occurs between the Notary and the parties appearing before it.¹⁴

b. Administrative Responsibilities

Administrative sanctions for notaries are regulated in UUJN Article 85, Code of Ethics and Regulation of the Minister of Law and Human Rights Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notaries. In UUJN it has been determined as follows: "

- a) Verbal warning
- b) Written warning
- c) Temporary suspension
- d) Honorable discharge
- e) Dishonorable discharge

¹³Sjaifurrahman, HA, 2011. Aspects of Notary Accountability in Making Deeds, Mandar Maju Bandung. p. 10-11.

¹⁴Tasskja Nofeyska Pradistya. 2022. Notary's Liability Under Civil Law and Administrative Law Who Negligently Makes a Deed of Agreement That Does Not Meet the Valid Requirements of an Agreement (Study of the Decision of the Selong District Court Number 87/PDT.G/2019/PNSEL). Indonesian Notary. Vol 4 No 1. P. 168

Sanctions against a notary in the form of temporary dismissal from his/her position are intended to prevent the notary from carrying out his/her official duties for a period of time before sanctions in the form of honorable or dishonorable dismissal are imposed on the notary.¹⁵

c. Criminal Responsibility

In criminal law, the Notary's responsibility for the deeds he/she makes is not regulated in UUJN, but the Notary's criminal responsibility is imposed if the Notary commits a criminal act. UUJN only regulates sanctions for violations committed by the Notary against UUJN, the sanctions regulated can be in the form of a deed made by the Notary not having authentic power or only having power as a deed under hand. The Notary himself/herself can be given sanctions in the form of a warning to dishonorable dismissal. In order to be able to request such accountability, before there is a permanent court decision, the Notary's deed must be stated as a valid and binding deed (*presumptio justea causa*).¹⁶

Legal vacuum related to the lack of explicit regulation regarding criminal acts made in accordance with the Criminal Code, thus a Notary who is dishonorably dismissed due to a Notary violation alluding to imprisonment based on a court decision that has permanent legal force as a result of committing a criminal act of forgery on a deed he made with a sentence of 5 years in prison or more so that the Notary protocol is carried out by another Notary who has been selected by the Minister of Law & Human Rights on the basis of the Central Supervisory Council. In addition, a Notary can also be sued for damages in accordance with Article 1365 of the Civil Code if the violation or error made by the Notary results in a deed becoming inauthentic and being degraded to a deed under hand. This is a form of protection given to the person appearing if a Notary does not carry out his duties and obligations.¹⁷

Pati Regency is a district located in Central Java Province, Indonesia. Its capital is Pati Kota District. This district is famous for its motto *Pati Bumi Mina Tani*. The population of Pati district was 1,366,516 people in mid-2024 with an area of approximately 1,503.68 km² consisting of 21 sub-districts¹⁸. With the size of the district and supported by its fairly advanced agricultural land, it is a place for notaries and PPAT as the makers of deeds in resolving problems regarding the making of land deeds. The number of notaries in Pati Regency is relatively high and

¹⁵Wulan Agustini, Benny Djaja. 2023. Legal Consequences and Liability of Notaries for Deeds That Are Legally Defective, *Lex Jurnalica*. Volume 20 Number 1, April 2023. P. 10

¹⁶Fabryan Nur Muhammad, 2019, Application of Criminal Sanctions Against Forgery of Authentic Deeds Committed by Notaries, *Media of Law and Sharia*, Vol.1, No 1. P. 7

¹⁷Praja Pranoto, Isnaini, Sri Pinem, 2023, Position of Criminal Sanctions in Law Number 2 of 2014 Law on the Position of Notary for Forgery of Authentic Deeds, *Journal of Education, Humanities and Social Sciences (JEHSS)* Vol 5, No. 4, May 2023. P. 15

¹⁸<https://www.puskomppati.org/profil-kabupaten-pati-bumi-mina-tani>

is balanced by complex problems as well. Based on the results of an interview with Mr. Bambang Wahyu Permono

As a Notary and Honorary Council in Pati Regency since 2022, it was found that the majority of notaries in Pati Regency in carrying out their duties according to procedures and there were no problems, this was supported by good supervision from the Regional Supervisory Board, but during his tenure as the Honorary Council in Pati Regency there was one Notary in Pati Regency who had gone through a notary code of ethics hearing. He added that the notary and PPAT with the initials G started from collaborating with a third party so that the deed signed by the PPAT was not known to be true, both the buyer and the land owner, because there was a party who felt that they did not sign the PPAT deed so that the party felt disadvantaged and finally reported it to the Pati Police.

The incident that occurred to a notary with the initials G in Pati Regency was supported by the notary's negligence in legalizing a deed without knowing its truth because the one who carried it out and witnessed it was not from the notary himself but a third party who was assigned by the notary to attend the signing of the deed. Based on the case that occurred, the notary concerned experienced a code of ethics trial as well as criminal sanctions that had been imposed in a trial at the Pati District Court in 2024 in the form of imprisonment for approximately 4 months and received a verbal warning in administrative sanctions.¹⁹

Based on the results of interviews conducted by the author, it can be seen that Notaries in Pati Regency made mistakes due to the negligence of the notary who submitted the deed to a third party when signed by the parties. for that the notary must carry out his responsibility even though it was unintentional.

Based on the theory of a notary's legal responsibility put forward by Abdul Ghofur means that a notary's responsibility as a public official for authentic deeds with the material truth attached to them, this is divided into 4 responsibilities, including:

- 1) The responsibility of a notary based on the Notary's job regulations (UUJN) regarding the material truth in the deeds he makes
- 2) The responsibility of a notary in carrying out his/her duties is based on the notary's code of ethics.
- 3) The Notary's civil responsibility for the material truth of the deeds he makes

¹⁹Interview with (Bambang Wahyu Permono) Member of the Notary Honorary Council, February 06, 2025.

4) The criminal responsibility of a notary for the material truth of the deeds he makes²⁰

Based on the information above, in the example case that ensnared the notary with the initials G in Pati Regency It can be said that he has been criminally responsible for the material truth in the deed he made, by serving a sentence of approximately 4 months imprisonment as determined by the Pati District Court. As well as being responsible for the Notary's job regulations (UUJN) for the material truth in the deed he made, this responsibility is proven by carrying out a notary code of ethics hearing by undergoing administrative sanctions that have been carried out after carrying out a notary code of ethics hearing under INI (Indonesian Notary Association)

3.2. Notary's Responsibility for Deeds That Do Not Fulfil Material Elements and Truth

Notary can be said as an official who makes authentic deeds. Authentic Deed is a deed made by or before an official who is authorized to do so by the authorities, according to the provisions that have been set, either with or without assistance from the interested party, which records what is requested to be included in it by the interested party. Authentic Deed mainly contains the statement of an official, who explains what he did and saw in front of him.²¹

The notarial deed contains the strength of material evidence as proof that the parties concerned and interested must or have explained the event clearly and truly. It can be said that the strength of this material evidence is proven not only the truth of an event but also proof of the agreement of the parties concerned.²²

Amendments to UUJN Article 51 Paragraph 2 No. 30 of 2014 which originally explained that "Corrections as referred to in paragraph (1) are carried out by making a report and providing notes about this in the original Minutes of the Deed by stating the date and number of the deed of the correction report" have become more detailed as "Corrections as referred to in paragraph (1) are carried out in the presence of the person appearing, witnesses and Notary which are stated in the report and providing notes about this in the original Minutes of the Deed by stating the date and number of the Deed of the correction report."²³In this change, it can be interpreted that the contents of the deed must be in accordance with the truth, so that if there is an error when typing in the official deed, after it is signed, it must

²⁰Abdul Ghofur Anshori, 2009, Indonesian Notary Institution: Legal and Ethical Perspective, UII Press, Yogyakarta, p. 21

²¹Suwignyo, H. 2019. The Validity of Thumbprints as a Substitute for Signatures in Making Authentic Deeds. Notarius, Vol 1 No 1. p.74

²²Habib Adjie, 2017, Cancellation and Revocation of Notarial Deeds, Refika Aditama, Bandung, p. 13

²³Andi Hamminanga, 2019, "Implementation of the Authority of the Regional Notary Supervisory Board in the Implementation of Notary Duties Based on the UUJN" Law Thesis, Gadjah Mada University, Yogyakarta, p. 32.

be witnessed by the parties or witnesses from the notary himself.

Mr. Bambang Sri Laksono Pamukas SHMkn as one of the Notaries in Pati Regency as an additional resource person regarding the case that ensnared the notary with the initials G, has the opinion that the notary protocol is one of the state archives, therefore the notary protocol must be treated like a state document that must be stored and maintained to remain authentic.²⁴ Thus, the notary protocol as a collection of documents must always be kept and maintained under any circumstances, even if the notary who owns the protocol is on leave or has died. After a deed is legally declared null and void, the notary is still obliged to keep the archive of the deed and there is no rule for the notary to delete the deed number because a deed that is null and void should be considered never to have existed. Sukanto added that for a deed with the status of null and void and has been decided by the Court, the notary concerned is obliged to attach a copy of the District Court's decision to the minutes of the deed, in order to be used as a reference if there are unwanted things. This is also to avoid negligence related to providing a copy of the deed, which may be misused by other parties.²⁵

On the other hand, the attachment to the court decision is used as a reference for other legal actions or there are parties who deny the deed. Problems that may arise in the future are if the deed that has been issued by a notary is determined to be legally defective or its truth is denied by one/the parties listed in the deed.

Based on the possibilities that occur, there are circumstances that can cancel a notarial deed with consequences for the existence of the notarial deed's status, namely:

- 1) Can be canceled.
- 2) Has the power of proof as a private deed.
- 3) Null and void.

According to the results of interviews conducted by the author with Mr. Bambang Wahyu Permono SH, MKn. As a notary and also the Honorary Council in Pati Regency, he is of the opinion that a notary in Pati Regency could have a deed that is legally flawed, this can be matched with the truth of the actual event and can also be proven in court or code of ethics hearings.²⁶

Based on the theory of legal consequences put forward by Jazim Hamidi Jazim Hamidi. The words legal impact / legal consequences contain the meaning of

²⁴Interview with (Bambang Sri Laksono Pamukas,) Notary in Pati Regency, February 7, 2025.

²⁵Inka Candra Kharizma, 2021, Administration and Accountability of Notaries for Notarial Deeds That Are Void by Law, *Officium Notarium*. no. 3 vol. 1 December. page 490

²⁶Interview with (Bambang Wahyu Permono, Member of the Notary Honorary Council, February 06, 2025.

direct, strong or explicit legal impacts or consequences. In the legal science literature there are three types of legal consequences, namely as follows:

- a. Legal consequences include the birth, change or disappearance of a particular legal situation;
- b. Legal consequences in the form of the birth, change or disappearance of a particular legal relationship;
- c. Legal consequences in the form of sanctions, which are not desired by the legal subject (unlawful acts)

Referring to the above explanation, it can be concluded that the legal consequences of a deed that does not fulfill the material truth element that occurred in one of the cases that ensnared a notary with the initials G in Pati Regency resulted in legal consequences in the form of sanctions that were not desired by the legal subject (unlawful acts). These sanctions can be in the form of administrative sanctions stating that the deed that has been made is declared null and void by law.

According to the author, the impact of the absence of material elements in the Notary's document can cause the Notary to be involved in legal action against the aggrieved party. If the aggrieved party does not demand material compensation from the Notary, then the Notary remains responsible for the document declared invalid by the court as a consequence of his legal action. For this reason, the principle of caution is very necessary for the notary when making a deed, because the deed issued by the notary is an authentic deed which is strong in evidence, and if the deed is wrong then it can be said to be null and void by law.

4. Conclusion

The notary's responsibility for the deed that does not fulfill the material truth carried out by the notary with the initials G in Pati Regency is criminally responsible for the material truth in the deed he made, by serving a sentence of approximately 4 months imprisonment as determined by the Pati District Court. As well as being responsible for the Notary's job regulations (UUJN) for the material truth in the deed he made, this responsibility is proven by carrying out a notary code of ethics trial by undergoing administrative sanctions that have been carried out after carrying out a notary code of ethics trial under INI (Indonesian Notary Association). The legal consequences of a notarial deed that does not fulfill material truth are in the form of sanctions that are not desired by the legal subject (unlawful acts). These sanctions can be in the form of being declared invalid or null and void by law directly by the court as a consequence of its legal action.

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