

Notary's Responsibility for the Loss of the Customer's Land Ownership Certificate

Wa Ode Siti Yaningsih¹⁾ & Djunaedi²⁾

¹⁾ Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: waodesitiyaningsih@gmail.com

²⁾ Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: djunaedi@unissula.ac.id

Abstract. *This study aims to analyze the notary's responsibility for the loss of a land title certificate and the legal protection provided to clients. A land title certificate is legally binding evidence of land rights, and its loss can lead to legal uncertainty and losses for the rights holder. In notarial practice, notaries often receive and store original documents belonging to the parties, so clarity is needed regarding the notary's responsibility in the event of the loss of such documents. This study uses a sociological juridical research method supported by library research. The sociological juridical approach is used to examine the establishment of legal norms in notarial practice through direct interviews with notaries. Library research is conducted by reviewing laws and regulations, legal literature, legal theories, and Kendari District Court Decision No. 14/pdt. G.S/2020/PN Kdi, which relates to the loss of a client's land ownership certificate. The results of the study indicate that (1) legal protection for customers against the loss of land ownership certificates is provided through preventive and repressive legal protection. (2) notaries are responsible for the loss of ownership certificates if the loss occurs due to negligence in carrying out their duties, with responsibilities that include civil, administrative, and ethical aspects. (3) legal solutions carried out by notaries for the loss of customer ownership certificates in the form of assistance in processing replacement certificates at the land office as a form of professional responsibility and good faith of the notary. In addition, the deed of granting mortgage rights has a close relationship with the ownership certificate as a collateral object, so that the security of the certificate in the process of making and registering mortgage rights is an important obligation of the notary in ensuring legal certainty for the parties.*

Keywords: Certificate; Notary; Ownership; Responsibility.

1. Introduction

Legal protection of land rights is a crucial component of Indonesia's land law system. Land title certificates, as strong evidence, provide legal certainty for rights

holders, as confirmed in various academic studies. Anak Agung Istri Agung et al. (2022) stated that legal certainty concerns not only state recognition of ownership rights but also guarantees the security of the documents that serve as the basis for legal legitimacy.

In notarial practice, notaries often receive and store original documents belonging to parties, including certificates of ownership, for the purposes of creating authentic deeds. Research (Umbas and Santoso, 2020) confirms that notaries, as public officials, have a professional responsibility to provide legal protection to parties in carrying out their duties. This responsibility includes the obligation to act carefully and cautiously, and to safeguard documents in their possession.

However, in practice, the loss of land title certificates held by notaries remains a problem. Candra, Majid, and Widyawati (2024) demonstrated that the loss of land documents can result in legal losses and hinder rights holders from optimally exercising their rights. This situation demonstrates a gap between norms requiring notaries to exercise caution and the empirical reality that document loss still occurs.

Furthermore, Antasena (2020) explains that issuing replacement certificates for lost certificates requires complex administrative procedures, potentially creating temporary legal uncertainty for rights holders. Meanwhile, Berutu et al. (2024) emphasize that a notary's legal responsibility extends beyond the issuance of deeds and extends to protecting the interests of the parties.

Based on these conditions, a distinction can be seen between *das sollen* and *das Sein* in the practice of *Ria tan* notaries. Normatively, notaries are obliged to guarantee the security of documents entrusted to them, but in fact, cases of lost certificates still occur, impacting clients. Therefore, identifying issues regarding legal protection and notary responsibility for the loss of ownership certificates is important to examine in depth to strengthen the legal protection system in the notary sector.

This study aims to analyze the notary's responsibility for the loss of ownership certificates in order to provide legal protection to customers.

2. Research Methods

The approach method used in this research is a sociological juridical approach, namely an approach that examines law as a norm as well as social behavior in notarial practice. The research specification is descriptive analytical in nature, as this study systematically describes the notary's responsibility for the loss of ownership certificates, then analyzed based on applicable legal provisions and legal protection theory. The data collection method is carried out through Literature study, namely the collection of secondary data in the form of laws and regulations, legal literature, and scientific journals from the last ten years that are relevant to the notary's responsibility for legal benefits in the land sector. Direct

interview with a notary as a research source to obtain empirical data regarding document storage practices and forms of accountability for the loss of ownership certificates. The data analysis method was carried out qualitatively, namely by grouping, interpreting, and connecting normative data with empirical data to obtain conclusions that are relevant to the research objectives.

3. Results and Discussion

3.1 Legal Protection for Customers Against Loss of Land Ownership Certificates

A land title certificate is proof of ownership that has strong legal force in the land registration system. Anak Agung, Istri Agung et al. (2022) emphasized that the land registration system aims to provide legal certainty and protection to rights holders. Therefore, the loss of a land title certificate not only has administrative consequences but can also disrupt the legal certainty of rights holders.

Based on the interview results, the notary stated that the loss of the certificate in his possession constituted negligence for which he was responsible. Clients in this position are entitled to both preventative and repressive legal protection.

Preventive legal protection is realized through an orderly document storage administration system and the use of strict standard operating procedures. Umbas and Santoso (2022) state that legal protection for parties in notarial practice will require professionalism and caution from notaries in carrying out their duties.

Meanwhile, repressive legal protection is provided when documents are lost. Antasena (2024) explains that issuing a replacement certificate is a form of restoring lost land rights, although the procedure requires certain administrative steps. In this context, the role of a notary is crucial in assisting and ensuring that clients regain legal certainty.

Thus, legal protection for customers in the event of loss of ownership certificates must be understood as a notary's moral and professional obligation to maintain the trust given by the parties.

3.2 Notary's Responsibility for Loss of Ownership Certificate

The responsibilities of a notary in notarial practice are not limited to the creation of authentic deeds but also include the obligation to safeguard documents under his/her control. Berutu et al. (2024) emphasized that notaries have legal responsibility for all their actions and omissions in carrying out their duties.

Interviews showed that notaries acknowledged responsibility for lost certificates due to negligence in internal services. This responsibility was demonstrated through active efforts to assist clients in obtaining replacement certificates without burdening them with losses.

From a professional ethics perspective, Bella Sabriana et al. (2005) emphasize that a notary's professionalism is measured not only by adherence to written norms but also by their commitment to maintaining public trust. Therefore, the loss of a certificate under a notary's supervision can be categorized as a violation of the principles of prudence and official trust.

These responsibilities can be both administrative and professional. Administratively, a notary can be subject to sanctions if proven to have violated their official duties. Professionally, a notary is obligated to restore the client's well-being so that they can regain legal certainty regarding their rights.

3.3 Legal Solutions Provided by Notaries for Lost Ownership Certificates

Based on empirical data, legal solutions implemented by notaries include:

1. Report the loss to the police.
2. Assist in the process of announcing the loss.
3. Accompany customers in submitting applications for replacement certificates at the land office.

Candra et al. (2024) explain that restoring land rights due to lost documents requires coordination between the rights owner, the notary, and the land agency. This demonstrates that the notary's responsibility extends beyond admitting guilt and includes taking concrete action to restore the client's rights.

These steps constitute a form of corrective justice aimed at restoring the situation to its original state. Therefore, legal solutions implemented by notaries must be aimed at restoring legal certainty and protecting the client's interests comprehensively.

3.4 Deed of Granting Mortgage Rights in Relation to the Loss of Ownership Certificate

A mortgage deed (APHT) requires the original certificate as the basis for the encumbrance. Loss of the certificate can delay the mortgage creation and registration process.

Antasena (2024) explains that issuing a replacement certificate is crucial for resuming the mortgage process. This demonstrates that losing a certificate impacts not only the landowner but also other legal transactions related to the land.

Thus, the notary's responsibility in safeguarding documents is very important to prevent further legal processes, including the creation of APHT, being hampered.

4. Conclusion

Notaries have professional and administrative responsibility for the loss of property certificates in their possession. Legal protection for clients is provided through preventive measures, such as an orderly document storage system, and repressive measures, such as assistance in issuing replacement certificates, to ensure legal certainty regarding land ownership issues.

It is necessary to strengthen the standard operating procedures for document storage in the practice of Ria Tan notes and to increase the professional awareness of notaries in maintaining the mandate of their position in order to prevent the loss of ownership certificates in the future.

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