

Notary's Responsibility in Implementation Principles Of Caution When Verification of Ownership Documents for Fiduciary Guarantee Objects that are not Included in the Credit Agreement

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Abstract. *This study aims to determine and analyze the notary's responsibility in applying the principle of prudence when verifying ownership documents of fiduciary collateral objects that are not included in credit agreements. The type of research used in this thesis is normative legal research. The approach methods used are the Statutory, conceptual, and case approaches. The type of data used in this study is primary legal data, which includes the 1945 Constitution; Law of the Republic of Indonesia Number 2 of 2014; Law on Fiduciary Guarantees. Law on Banking, Criminal Code; Civil Code; Notary Code of Ethics, as well as secondary data containing books and other supporting documents. The data collection for this research was obtained through library research. The data analysis method used is prescriptive analysis, which provides arguments for the results studied. The results show that the responsibility of a notary if he ignores the principle of prudence can be in the form of civil, criminal, or administrative liability so that the application of the principle of prudence when carrying out credit agreements must be carried out carefully, precisely, thoroughly, and cautiously.*

Keywords: *Notary Liability; Ownership Documents; Principle of Prudence.*

1. Introduction

The provisions contained in Article 16 paragraph (1) letter a of Law No. 2 of 2014 concerning the Position of Notary state that in carrying out his position, a Notary is obliged to act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of the parties involved in legal actions. Notaries are required to act carefully, which means acting carefully, thoroughly and cautiously. Notaries are one of the public officials appointed by the State to enforce the law for all members of society who need their assistance. Law enforcement aims to provide and guarantee legal certainty, justice and truth as well as respect for Human Rights.

However, in practice, there are not always many cases where Notaries are sued or criminalized for negligence in verifying the validity of collateral ownership documents, for example, there are double certificates or disputed land, invoices or fictitious BPKB. Demands for efficiency in banking procedures and security in the credit process, often do not run well, because Notaries are only considered as parties who will bind the agreement of the parties without knowing or directly ensuring the eligibility of the prospective debtor, because most of the agreement clauses have been determined by the Bank itself, and the one who assesses the suitability of customers to receive loans is the Bank, by conducting a Credit Analysis carried out to assess the financial feasibility and risks associated with prospective credit recipients.

For example, researchers found a case in Balikpapan, where Notary A validated an Investment Credit Agreement (KI) with the object of fiduciary guarantee, namely the ownership document of heavy equipment, but in the credit agreement process, the original document of the heavy equipment was not included, with the reason that the document had been checked and was safe, and in the deed found by the researcher, the Notary only mentioned the details of the Ownership document, which was obtained from a photo sent by the Bank.

The researcher considers that what was done by the Bank and Notary A who only agreed to the reason was wrong, and violated the principle of prudence. Notaries should not just believe it. Because a notarial deed must provide legal certainty, that an event/fact mentioned in the deed is truly explained by the parties who appear in order to prove the formal truth in this case in the form of certainty about the day, date, month, year, time or time of appearing, and the witnesses who appear, initials, and signatures of the parties, witnesses, and Notary, as well as proving what was seen, witnessed, heard by the Notary, and recorded the statements or statements of the parties. And proving material truth concerning the actual substance or content, such as the truth that the collateral object really belongs to the customer, the invoice shown is truly genuine, not fake or engineered.

2. Research Methods

The research method used in this thesis is normative legal research. Normative legal research is research that places law as the foundation of a system of norms. The system of norms in question concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines or teachings.¹The approach method used is the Legislative Approach, namely related to the legal issues being studied as a basis for analysis. In addition, in this research, the author also uses a conceptual approach, namely an approach used to analyze legal materials in order to understand the meaning contained in legal terms or to test these legal terms in theory and practice.²Finally, the researcher will use a case study approach by identifying relevant cases that will serve as concrete benchmarks for the topic being discussed. Data sources come from primary and secondary data. Data collection methods include library research. The data analysis method used is prescriptive analysis, which provides arguments for the research results.

3. Results and Discussion

3.1. Application of the Principle of Prudence When Verifying Ownership Documents of Fiduciary Collateral Objects Not Included in the Credit Agreement

The Principle of Caution is one of the most important principles that must and must be applied or implemented by a Notary, so that no errors or legal defects occur in making authentic deeds, because the deeds they make must be accounted for to the public. A notary must provide legal certainty that an event or fact mentioned in a deed is truly an actual event or that which is explained by the parties appearing at the time stated in the deed in accordance with the procedures determined in making the deed. A notary is expected to be able to...Examining all the completeness and validity of the evidence or documents shown to him, as well as listening to the statements or statements of the parties must be done as a basis for consideration to be included in the deed.

Because the value contained in an authentic notarial deed is not only about what the parties explained to the Notary, but as authentic evidence of the actions or facts that occurred before the Notary when the deed was made.³If the notary is not careful in checking important facts, it means that the notary is acting carelessly.⁴

¹Mukti Fajar and Yulianto Achmad, 2015, *Dualism of Normative and Empirical Legal Research*, 3rd Edition, Pustaka Pelajar, Yogyakarta, p. 34

²Hajar M, 2015, *Models of Approach in Legal and Fiqh Research*, UIN, Suska Riau, Pekanbaru, p. 41

³Bella Okladea Amanda, 2022, *Principles of Notarial Prudence in Making Perfect Deeds*, Jurnal Hukum Vol. 4 No. 1, p. 231.

⁴M. Luthfan Hadi Darus, *Notarial Law and the Responsibilities of the Notary Public*, 2007, UII Press, Yogyakarta, p. 38

To prevent undesirable things, notaries must always remember and uphold their oath of office as stated in Article 4 paragraph (2) of the Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary, which reads;

"I swear/promise:

that I will obey and be loyal to the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary and other laws and regulations.

that I will carry out my office with integrity, honesty, thoroughness, independence and impartiality.

that I will maintain my attitude and behavior and will carry out my obligations in accordance with the professional code of ethics, honor, dignity and my responsibilities as a Notary

that I will keep confidential the contents of the deed and information obtained in the course of carrying out my position.

"That in order to be appointed to this position, either directly or indirectly, under any name or pretext, I have never and will not give or promise anything to anyone."

Notaries can also implement the following steps to anticipate obstacles in implementing the precautionary principle, including:

1. Conducting identification of the person appearing based on the identity shown to the Notary.
2. Ask, then listen and pay attention to the wishes or desires of the parties.
3. Examine documentary evidence relating to the wishes or wishes of the parties.
4. Provide suggestions and create a deed framework to fulfill the wishes or desires of the parties
5. Fulfilling all administrative techniques for making notarial deeds, such as reading, signing, providing copies and filing for minutes.
6. Carry out other obligations related to the implementation of the duties and position of a Notary.⁵

⁵Habib Adjie, 2009, Observing the Treasury of Indonesian Notaries and PPATs (Collection of Notaries and PPATs), Citra Aditya Bakti, Bandung, page 86.

As long as the Notary consistently implements the provisions mentioned above, the Notary can guarantee the implementation of precautionary measures for himself as a public official.⁶

In relation to verifying ownership documents of fiduciary collateral objects that are not included in the credit agreement, the Notary must not remain silent, in order to maintain his position if a civil case or civil lawsuit arises in the future.

The application of the precautionary principle that a notary must carry out is:

1) Still Requesting Ownership Documents, to be checked at AHU Online

The first thing a Notary must do is to request ownership documents to clear and clean or check the heavy equipment invoice to the Fiduciary Guarantee System in AHU Online using the chassis number and engine number to check whether the heavy equipment has been pledged or not, although it is not the main task, AHU Online Notaries are still advised to carry out this check to maintain their position in the event of a civil case or civil lawsuit in the future. AHU online Fiduciary is an electronic fiduciary guarantee registration application managed by the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights of the Republic of Indonesia. This system replaces the manual registration process with a digital one to speed up the issuance of guarantee certificates.

2) Making a Delay,

Immediately provide input to postpone the signing of the guarantee agreement. The notary cannot guarantee that a dispute over the ownership document will be resolved. If a dispute arises, for example, if the invoice is fictitious, the bank will be the one most affected.

3) Write a clause based on actual events and a self-protection clause into the deed.

If the Bank does not submit the ownership documents that the customer has submitted to him, then in the deed that will be made by the Notary, just convey the truth, write a clause stating the details of the ownership documents and add the clause "based on the statement given by the Bank, whose ownership documents have been checked and have been stored in the central bank's storage locker". However, apart from the above problems, for all the worst possibilities that can happen to the Notary in making a fiduciary guarantee deed, it is necessary to include 1 article containing a self-protection clause, which states that "The

⁶Sam Dwi Zulkarnaen, 2008, Principles of Prudence of Notaries as Public Officials in Carrying Out Their Position, Thesis of the Master of Notary Program, University of Indonesia, Jakarta, page 75.

Debtor fully guarantees the authenticity, validity, and legality of the ownership documents submitted, and releases the Notary from all legal claims in the future if forgery is found."

4) Refusing to Make a Deed

In order to achieve the principle of caution of a Notary in making a deed, if in the process there are doubts and errors regarding the documents of the parties, it is best for the Notary to refuse to make an authentic deed between the parties, so that if a dispute arises in the future, the notary is not involved. Article 16 paragraph (1) letter d of the UUJNP states "In carrying out his/her position, a Notary is obliged to provide services in accordance with the provisions of the Law, unless there is a reason to refuse it." This article does not explain the meaning of the reasons that can be used to refuse a client's request, however GHS Lumban Tobing provides several examples of reasons that can be used to refuse to provide assistance to someone who comes to him/her, including:

- a) In the event that the Notary is prevented from performing his duties due to illness or other work;
- b) If the presenters are not known to the Notary or their identities cannot be explained to the Notary;
- c) If the parties cannot explain their wishes clearly to the Notary;
- d) If the parties want something that is contrary to statutory regulations;
- e) If the Notary has committed an act that is contrary to Article 52 and Article 53 of the UUJN.

Therefore, notaries are required to have the courage to say no to clients. This means not "saying yes" to anything the client requests.

Regarding Legal Certainty regarding the Deed which was still made by Notary A based on the Legal Certainty Theory, are:

1. Legal certainty of deeds will fail

According to the Theory of Legal Certainty, an authentic deed must be legally binding and infallible. This is achieved by the notary witnessing, examining, and personally verifying the formal truth of the documents before him. When a notary merely writes down the details without examining the original document, in this case the invoice (purchase invoice), the notary has degraded his supervisory function. Formally, the deed is vulnerable to challenge because the notary includes information whose authenticity is unknown.

Although the Deed contains a clause stating that the Debtor fully guarantees the authenticity of the collateral documents, this clause does not automatically create legal certainty. Based on the Theory of Legal Certainty, the law must be able to provide perfect protection and results. When the Notary still approves the creation of this deed and only relies on the debtor's verbal guarantee without applying the principle of caution to check the original documents, then based on Article 41 of the UUJNP, the deed will be considered legally flawed from the start or its power will be degraded to become a private deed;

2. Execution Uncertainty

If the original documents are not presented, there will be a significant legal loophole. For example, if the debtor uses photocopies of the same invoice to fiduciarily use the heavy equipment to three different banks (duplicate invoices), or if the invoice has become fictitious because the equipment has been sold to another party, the bank itself is unaware of the sale. If a default occurs and the bank wants to enforce the heavy equipment, the bank will face difficulties because the fiduciary guarantee certificate is substantively flawed. The agreement, which was intended to guarantee certainty of debt repayment, becomes uncertain and unenforceable.

3.2. Legal Responsibility of a Notary in the Event of a Dispute Regarding a Credit Agreement Deed Due to Neglect of the Principle of Caution When Verifying Ownership Documents of Fiduciary Collateral Objects Not Included in the Credit Agreement Deed

In this study it is stated that the Notary has ratified the Investment Credit Agreement, and in the deed there is a clause stating the details of the fiduciary guarantee object, however according to the Researcher this is not enough to justify the Notary's actions who only agreed to the Credit Agreement process without seeing the original ownership documents. The Notary's duty is to be a witness who sees for himself all the documents submitted, both the identities of the parties, and the documents that serve as evidence in the agreement. Oral confirmation carried out by the Notary with the Bank does not have strong evidentiary value in court. If it turns out that the Bank later lied or the invoice was confiscated/lost, the Notary will still be considered guilty because he did not confirm for himself whether or not the ownership documents existed.

It is true that a notary is not responsible for the truthfulness of the contents (substance) of the parties' statements, for example, if the parties lie about their ability to pay. However, the notary has absolute responsibility for the deed-making procedure.

Regarding the Legal Responsibility of Notaries Based on the Theory of Legal Responsibility, Notaries can be prosecuted through three channels:

1. Civil Liability, Notary is deemed to have committed an unlawful act (PMH) due to negligence and carelessness. If it is proven that there is a procedure that has been violated, the authentic deed can be degraded to an underhand deed in accordance with Article 41 of the UUJN and receive civil sanctions in the form of a claim for compensation, as well as an affirmation that the legally flawed deed has lost its authentic nature, as regulated in Article 81 of the UUJN.
2. Criminal Liability: why can it fall under the criminal realm? Because there is an element of intent carried out by the Notary, violating Article 266 of the Criminal Code, even though he is not the main character, the Notary will be considered to have participated in entering false information, and the Notary involved in the case of falsifying false information into an authentic deed can be subject to criminal sanctions if the element of intent is proven in court.

Another example of this case is the West Jakarta District Court Decision No. 898/Pid.B/2022/PN.JKT.BRT, which showed that Notary X was proven to have assisted Mr. Y in placing false information in an authentic deed related to the takeover of PT Global Bara Mandiri. This action involved manipulating the company's structure without the presence of legitimate shareholders, including in an illegally held RUPS-LB (Extraordinary General Meeting of Shareholders). X was sentenced to one year in prison after being legally and convincingly proven guilty of the crime of assisting in placing false information. The Panel of Judges considered that this act fulfilled the elements in Article 266 of the Criminal Code. Intentionality and cooperation between the notary and the party ordering the insertion of false information are important factors in the notary's criminal liability.⁷

3. Administrative Sanctions: Notaries can be reported to the Notary Supervisory Board (MPN) with the threat of sanctions ranging from written warnings, temporary dismissal, to dishonorable dismissal.

Even if the credit agreement proceeds smoothly until it's paid off, the notary is still legally at fault. Under notarial law, a notary's fault is not measured by the final outcome (whether the installments are paid off or not), but rather by the procedure used to create the deed.

⁷Teguh Ariyanto, and Sudarso, 2024, "Criminal Liability of Notaries in the Crime of Assisting in Ordering to Place False Information into an Authentic Deed" Iblam Law Review, Journal Vol. 4, Number 3, p. 155-156.

4. Conclusion

The application of the Notary's precautionary principle in verifying ownership documents that are not included in the credit agreement, is to request the original invoice of the heavy equipment, to be checked into the Fiduciary Guarantee System in AHU Online, request that the signing of the agreement be postponed, create a self-protection clause, or state that the ownership documents are already at the Bank. refuse to make the deed; Related to the legal certainty of the deed that is still issued by the notary, it will be void and risk being degraded to a private deed and making the execution of the guarantee uncertain in the future. If a dispute occurs, due to the Notary's negligence, the Notary can be held accountable through three channels, namely:

- a. Civil Liability, receiving civil sanctions in the form of demands for compensation, as well as confirmation that the legally defective deed has lost its authentic nature, as regulated in Article 81 of the UUJN.
- b. Criminal Responsibility, the existence of an element of intent carried out by a Notary is considered to violate Article 266 of the Criminal Code
- c. Administrative Sanctions, notaries can be reported to the Notary Supervisory Board (MPN) with the threat of sanctions ranging from written warnings, temporary dismissal, to dishonorable dismissal.

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