

Analysis of the Notary's Responsibility for Errors in Making a Deed

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ABSTRACT

This research aims to analyze the notary's responsibility for errors in deed preparation, which is a crucial aspect in legal practice in Indonesia. Notaries, as public officials who have the authority to make authentic deeds, play an important role in ensuring the validity of legal transactions. However, errors in making a deed can occur due to various factors, both internal and external, which have the potential to cause legal disputes and financial losses for the parties involved. This research uses a normative method with a qualitative approach to explore the legal norms that regulate the responsibilities of notaries and the implications of errors that may occur. Errors in making a deed can be categorized as typographical errors and substantive errors, each of which has a different impact on the legal force of the deed. Notary responsibilities can be seen from two perspectives, namely civil law and criminal law, depending on the nature of the error that occurred. Research findings show that there is a need to increase awareness of ethics and integrity in notary practice, as well as recommendations for improvements in the implementation of notary duties in order to maintain public trust in this profession. It is hoped that this research can provide a constructive contribution to the development of better notarial practices in Indonesia.

Keywords: Liability, Notary, Error, Deed

1. INTRODUCTION

In accordance with the provisions of Article 1 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 respecting the Position of Notaries, a public official who possesses the capacity to make valid deeds and other authorities is referred to as a notary. One of the professions that requires professionals to play an active part in assisting the law enforcement process within the Unitary State of the Republic of Indonesia is the notary profession. This is one of the professions that requires professionals to carry out their profession. A public official who is authorised to make authentic deeds is known as a notary public. This authority is granted to a notary public so long as the ability to make specific authentic deeds is not reserved for other public officials, notaries have a very strategic position in the legal system in Indonesia. As a public official who is given the authority to prepare and ratify authentic deeds, the notary functions as a liaison who guarantees the validity and reliability of every legal transaction carried out by the public. The duties and responsibilities of a notary are not only limited to creating documents, but also include the important role of providing legal advice and ensuring that all parties understand the contents of the agreement they are signing. In this context, a deed drawn up by a notary is considered to have high legal force and is valid evidence in court [1], [2].

However, in practice, it is not uncommon for errors to occur in making deeds. This error can arise from various factors, both internal, such as the notary's negligence or inaccuracy, and external, such as inaccurate information from the client or related parties. These mistakes can have serious consequences, ranging from legal disputes to significant financial losses for the parties involved. Therefore, an in-depth analysis of the notary's responsibility for errors that occur in making the deed is very important to carry out [3]–[5].

Making a notarial deed is a fundamental step in various legal transactions, including sale and purchase agreements, establishing companies, transferring land rights, and making wills. Every deed issued by a notary has legal force that is officially recognized, so it is considered authentic evidence that cannot be easily refuted. Thus, the existence of a notary is very important to create legal certainty for the community. However, errors in making a deed can occur and can be classified into several categories. Substantial errors relate to the contents of the deed which may not be in accordance with the wishes or agreements of the parties. For example, a discrepancy between the contents of the deed and the actual facts can give rise to disputes at a later date. Formal errors relate to procedures that are not followed in making a deed, such as not fulfilling the requirements determined by law. Meanwhile, administrative errors include problems in filing or documentation that can cause difficulties in law enforcement [6], [7].

The notary's responsibility for this error can be seen from a civil law perspective. According to applicable law, a notary can be held responsible if an error occurs that results in losses for one of the parties. Apart from that, in the context of positive law, Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notaries has regulated the responsibilities of notaries. However, many cases in the field show that practice is not always in line with existing theory. There are a number of cases where notaries are sued by their clients because of errors that occurred in making deeds, which raises questions regarding the extent of the notary's responsibility, especially if the error was not entirely caused by their negligence [8], [9].

Therefore, this research aims to examine various aspects related to notary responsibilities regarding errors in making deeds. This analysis will cover the legal basis that regulates this responsibility, best practices that should be implemented by notaries, as well as legal impacts that may arise due to errors in making the deed. Through this research, it is hoped that it can provide constructive recommendations for notaries in carrying out their duties and responsibilities, as well as increase public trust in the notary profession which is crucial in creating legal certainty in Indonesia.

2. METHODS

The research method that will be used in analyzing notary responsibility for errors in making deeds is a qualitative normative approach. This research aims to explore and analyze legal norms governing notary responsibilities as well as the implications of errors that may occur in practice. First, this type of research is normative research, which focuses on applicable legal rules, principles and regulations, as well as how these norms are applied in real contexts. It is important to understand not only the legal basis governing notaries, but also how the application of this law functions in daily practice.

In terms of approach, this research uses a qualitative approach, which allows researchers to explore the meaning, context and complexity of legal norms and notary practices. This approach was chosen because of its more in-depth and analytical nature, providing space for researchers to understand the various factors that influence notary responsibilities, including the perspectives of various stakeholders. In addition, this approach allows a richer and deeper analysis of the data obtained, especially from interviews and case studies. Collection of legal materials will be carried out through several methods, starting with in-depth literature study. Researchers will collect and analyze relevant legal documents, such as Law Number 30 of 2004 concerning Notary Positions, as well as government regulations and other official documents relating to notarial practice. This is the basis for understanding the normative responsibilities of notaries. In addition, researchers will look

for books, scientific articles, and previous research that discuss the responsibilities of notaries and errors that may occur in making deeds. In this way, researchers can build a broader context regarding the issues raised. Analysis of court decisions will also be an important part of data collection. Researchers will collect and analyze court decisions relating to cases of notarial error, especially those involving the preparation of inappropriate deeds. By analyzing these legal decisions, researchers can understand how legal norms are applied and decided in practice, as well as their impact on notary responsibilities. In addition, interviews with notaries, legal practitioners and legal experts will be conducted to explore their views regarding the responsibilities, challenges and realities faced in practice. This interview aims to provide a more in-depth and valuable qualitative perspective. Next, data analysis will be carried out normatively and qualitatively. In normative analysis, researchers will examine and analyze relevant legal norms to understand the limits of notary responsibilities and the implications of errors that may occur. This includes identifying gaps in existing regulations and how these may impact practice. Meanwhile, qualitative analysis will be conducted on data from interviews and case studies to identify emerging themes and patterns, which may provide further insight into notary practice and their responsibilities.

3. RESULTS AND DISCUSSION

The notary's job is to control the legal relationship between the parties in written form and a certain format, so that an authentic deed can create a strong document in a legal process. Several notary authorities, apart from those in Article 15 paragraph (1) of the Law on the Position of Notaries, are explained in Article 15 paragraph (2) of the Law on the Position of Notaries which explains that notaries also have the authority to:

1. Verify the signature and the date of the private document by registering it in a special book (this provision is a legalisation of the private deed made by an individual or by the parties on stamped paper simply by registering it in a special book provided by a notary);
2. Make sure that documents are kept confidential by registering them in a unique book system;
3. Create duplicates of the original letters that you have written yourself, in the form of copies that contain descriptions that are written and displayed in the letter that is being referred to above;
4. Determine whether or not the photocopy is satisfactory by comparing it to the original letter;
5. Offering legal advice and guidance with regard to the documentation of deeds;
6. Create deeds that pertain to the land, as well as deeds that serve as auction minutes.

Actions carried out by a Notary can be held responsible for violations committed because they intentionally carried out these actions and caused losses to the parties. The principle of responsibility used is responsibility based on error. The notary can be held responsible if there is an element of error in his actions. It is necessary to provide proof of the elements of errors made by the Notary, which include:

- a. Day, date, month, and year faces;
- b. Time (o'clock) facing;
- c. The signature stated in the minutes of the deed.

Types of errors made by notaries can be divided into 2 (two), namely:

1. Errors in the typing in accordance with the provisions of Article 41 of the UUJN and Article 1869 of the Civil Code, this has an effect on the deed. One of the effects is the strength of the deed, which is affected when the strength value of the deed becomes imperfect. As a result, the deed cannot be used as strong evidence in the process of resolving a dispute, and this is the case if there is a lawsuit filed by another party at any time. The act of writing a deed that does not agree with the terms and conditions that are imposed by law will be considered a violation, specifically a violation of the terms and conditions that are imposed by law;
2. Errors in content (substance). Substantive errors cannot be made in a deed and will not provide any sanctions to the notary who made it. If the notary makes a mistake in relieving or constantizing, then the result may be that someone will be harmed. Mistakes are categorized into 2 (two), namely intentional (*dollus*) and negligent (*culpa*).

Intentional is an act done with knowledge and will. For this to be intentional, there is no need for an intention to cause harm to another person. Meanwhile, negligence is an act where the person who makes it knows the possibility of consequences that are detrimental to other people. The concepts of responsibility and professional ethics are intricately intertwined with those of morality and integrity. In the event that a notary does not possess high morals and integrity, it is unreasonable to anticipate that they will have appropriate professional obligations and ethics. According to Sudarsono, responsibility is an obligation for someone to carry out properly what has been required of him. Responsibility is borne by individuals who are capable of acting morally. The object of responsibility is truly human action starting from the part of humans who act through free will. According to Lanny Kusumawati, the legal responsibilities of a Notary in carrying out his profession are classified into 2 (two) forms, namely:

- 1) Responsibility under civil law, in the event that the Notary makes a mistake as a result of breaching a promise as provided in the provisions of the Civil Code Article 1234 or an unlawful act as stipulated in the provisions of the Civil Code Article 1365. This mistake has resulted in financial losses for the customer or for third parties.

Criminal Law Responsibility, in the event that the Notary has undertaken a legal conduct that is banned by law, or if the Notary has committed a mistake or an illegal act, either intentionally or carelessly, that causes harm to another person. The component of responsibility that pertains to the Notary originates from the fact that the Notary is negligent (*culpa*), which leads to errors (*schuld*) that are made by the Notary in the course of carrying out his official duties. These errors result in losses for other individuals who require the services of the Notary. In the event that the Notary commits an act that is considered to be a violation of the law (*onrechtmatige daad*), which must first be demonstrated, the Notary may be subject to sanctions in the form of threats as determined by the law, and they may also be held accountable from a civil, administrative, and judicial standpoint.

CONCLUSION

The conclusion of this research shows that the notary's responsibility for errors in making deeds is an important aspect of legal practice in Indonesia. The notary, as a public official in charge of controlling legal relations between the parties, has the responsibility to ensure that the deed he makes meets all applicable provisions. Based on the Law on Notary Positions, notaries have the authority to certify signatures, record documents, and provide legal counseling, but they must also be responsible for their actions if an error occurs that results in losses for other parties. Errors that can be made by notaries are divided into typing errors and substantive errors. Typing errors can

affect the legal force of the deed, while substantive errors, although they do not always result in sanctions for the notary, can cause losses for the parties involved. In the context of liability, there are two types of legal responsibility that can be imposed on notaries, namely civil law responsibility and criminal law responsibility. Civil liability arises when a notary breaks a promise or commits an unlawful act, while criminal liability is imposed if the notary commits an act prohibited by law.



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