



Notaries responsibility for deeds containing false information

Rally Nufi Khafialima Zahra¹, Pujiyono², Noor Saptanti³

¹ Master of Notary, Faculty of Law, Sebelas Maret University, Indonesia

² Professor, Lecturer of Master of Notary, Faculty of Law, Sebelas Maret University, Indonesia

³ Lecturer of Master of Notary, Faculty of Law, Sebelas Maret University, Indonesia

Abstract

Notaries who do not perform their duties and positions may be punished according to the law, i.e. civil penalties, administrative penalties or even criminal penalties. When performing the duty and position of a Notary, the Notary only relies on formal truth, while the material truth lies in the information and documents brought to the Notary by that party. The reality that is happening in society is that the parties provide data and information that is not consistent with the reality provided to the Notary at the time of making the deed. This type of research is normative research that uses a statutory approach based on examining legal issues to find solutions to legal problems. Legal research documents come in the form of primary legal documents and secondary legal documents. The technique of collecting legal documents used is the technique of library research on legal documents.

Keywords: False information, responsibility, notary, deed

Introduction

Indonesia is a constitutional state that ensures security, order and legal protection for the Indonesian people according to the constitution of 1945. Notaries play an important role in ensuring legal security in services public, i.e. by concluding agreements in the form of authentic deeds. This is because Notaries have a deeper understanding of the making of agreements which authentic deeds made by Notaries have a perfect evidentiary power when used as evidence. A deed of authentication based on Article 1868 of the Civil Code (hereinafter referred to as KUH Perdata) is a deed drawn up in legal form, by or before public officials authorized to do so at the place where the deed is located. Pursuant to Article 1, Point (1) of the Republic of Indonesia No. 2 of 2014 regarding the Amendments of Law No.

30 of 2004 Regarding the position of Notaries (hereinafter referred to as UUJN), it is stipulated that notarization officer means an officer who is generally authorized to perform other authentic and authorized deed as provided in this law or pursuant to other law. This means that Notaries are authorized to drawn up deeds that meets the needs of the society and that the position of Notary is a position of trust. The existence of social trust means that the Notary has a responsibility to fulfil this trust to the best of the Notary ability and respect the legal ethic, dignity and nobility of the Notary position. If a Notary violates trust when performing this deed, whether intentionally or unintentionally, the Notary must be held responsible. Notary public is therefore a noble profession (*officium nobile*).

Article 15, Point (1) of the UUJN provides that the Notary has the power to issue certificates of authenticity for all deeds, agreements and acts as required by law and/or the parties wish to declare by deed of authenticity, to ensure the issue date of the authentic deed, preserve the deed, provide documents, deliver copies and citations of the deed to the extent that the performance of such deed is not assigned or excluded to another official or other person in accordance with the provisions of law. A notarized deed has perfect evidentiary power if the procedure for making the deed is

fulfilled and in accordance with the form prescribed by law. If any of the procedures that are not fulfilled can be proven, then the deed can be declared as a deed that has imperfect evidentiary power and the deed become an underhand deed through court proceedings (Adjie, 2011) ^[5]. If the Notary's behaviour causes a dispute or lawsuit, it is necessary to determine whether that behaviour was the Notary's fault because it was intentionally for the benefit of one of the parties or not or the fault of the parties who provides information that is not in accordance with the truth. If a document drawn up by a Notary contains legal errors due to the Notary's fault, whether accidentally or intentionally, the Notary must bear moral and legal responsibility.

Notaries who do not perform their duties and positions may be punished according to the law, i.e. civil penalties, administrative penalties or even criminal penalties. The regulation of criminal sanctions against Notaries is not regulated directly, but in fact, people often see violations by Notaries that can be criminally prosecuted according to the provisions of the Penal Code. There are still Notaries who have become suspects based on the investigation of acts performed in front if Notaries that have enough criminal elements, such as participating in forgery of letters and deeds. A Notarized deed essentially contains formal facts in accordance with what the parties have declared to the Notary. Notaries are responsible for drafting the document according to the wishes of the parties and reading the content of the document to the parties. The parties' statements are written into the notarial deed (Vergano and Retnaningsih, 2022) ^[11].

In reality, what happens in the society is that the parties provide data and information that is inconsistent with the reality provided to the Notary at the time of drawing up the deed. This will affect the Notary's approval of the deed if this becomes an issue in the future. Many Notaries have become defendants in the problem of making deeds they made. The result of the problem is that the deed is proven to be underhand or becomes null and void. One example of a problem that often arises is that the parties provide false

information or documents to the Notary for their own personal interest. It is difficult for the Notary to guarantee that what is stated by the parties when asked for information is true, because the Notary is not an investigator of the data or information provided by the parties (Thaliasya and Priandhini, 2021)^[1].

When signing deed, Notaries only record the information provided by the parties without discovering the truth of the information, because the Notary has no right to trace the material facts from the data and information provided by the parties. This affects the deeds passed by Notaries, which will later become problematic and raise the issue of the form of responsibility of Notaries in the process of writing authentic deeds that their information parties are falsified (Adjie, 2008)^[4].

Based on these problems, the author wants to discuss about the Notaries responsibility for deeds containing false information in the deed they make based on information provided by clients. When performing the duties and positions of a Notary, the Notary relies only on official facts, while the material truth lies in the information and documents brought to the Notary by that party.

Research methods

This type of research is normative research, which also has the same meaning as doctrinal research, which is research based on legal documents, focusing on reading and studying legal documents, both primary and secondary. This research uses a statute approach on the basis of examining legal issues to find solutions to legal issues. There is no data in legal research. Therefore, to solve legal issues and at the same time provide appropriate prescriptions, the sources of research are needed. Legal research documents can be divided into two types, which are research sources in the form of primary legal documents and secondary legal documents (Marzuki, 2013)^[12]. Primary legal documents are legal documents that are binding and underlie other legal documents. Secondary legal documents are legal documents that are closely related to primary legal documents, helping to analyse and understand existing primary legal documents. Secondary legal documents also provide explanations of other primary legal documents such as books, journals, and articles that examine the issues being researched.

The legal documents collection technique used in this legal writing is the technique of library research on legal documents, both primary and secondary. This legal material collection technique is carried out by reading, studying, reviewing, and analysing legal materials by adjusting the problems studied by the author. Legal documents analysis involves the use of legal document sources that have been collected for use in solving the problems of this research. The legal material that has been processed is then analysed using qualitative analysis, namely the legal material that has been obtained by referring to the existing theoretical basis (Fajar and Achmad, 2010)^[9]. The data obtained as a result of this study were synthesized and describe descriptively to obtain a clear, understandable and solution-oriented picture of the researched problems.

Result and discussion Notaries Responsibility for Deeds Containing False Information

The Notary's responsibility in UUJN has a meaning that Notary has committed to comply with the provisions of law when performing his duties and obligations, must be responsible, including all consequences, must take legal measure. Legal sanctions in case of violation of basic legal

provisions. If the deed drafted by the Notary causes problems later or cause damage to one of the parties, then in this case Notary cannot be directly blamed or responsible. Indeed, the Notary only gives expression to the wishes of the parties, so that the judicial act or deed performed by the parties is described as an authentic deed (Aini and Simanjuntak, 2019)^[10].

Pursuant to the provisions of Article 15, Point (1) of the UUJN, it is clear that Notaries when drafting authentic deeds are required to have good and honest skills in order to uphold legal certainty for the society. However, it does not rule out the possibility of errors in making deeds, such as procedural errors made by the Notary himself. In addition, errors can also occur from parties who are dishonest in providing information or provide false information. The existence of these errors makes Notaries responsible for their actions, both in the form of administrative, civil, and criminal sanctions (Amalia *et al*, 2021)^[12].

Legal acts in notarized documents are legal acts of the parties when entering into a contract and requesting that the legal acts they perform be recorded in authentic deeds. A true deed includes rights and obligations that bind only on the parties whose names are stated in the deed. Notaries therefore only write deeds according to the wishes of the parties. In addition to ensuring the formal authenticity of the deed, the Notary must also act in accordance with his obligations set out in Article 16 of the UUJN. Article 16, Point (1) letter a of the UUJN, stipulates that when performing Notary positions, Notaries must act honestly, truthfully, cautiously, independently, objectively and ensure the interests of the parties involved in legal acts.

Based on these regulations, it is clearly that if the Notary does not comply with these regulations, the Notary is considered to have committed a violation of the law. Notaries who neglect and violate their professional obligations will harm themselves and also be responsible both administratively, civilly, and criminally (Ardhani and Azheri, 2023)^[2].

The Notary public's liability is subject to the principle of fault-based liability. This means that the Notary must be responsible if his or her actions contain errors or intentional violations. However, if errors or violations belong to the parties, the Notary is not responsible as long as they perform their duties according to regulations. The Notary is not responsible if the parties make mistakes because Notary only writes what the parties communicate to clearly state it in writing in the deed. Any misrepresentation by the parties will result in legal liability.

Notaries who violate regulations in the UUJN may also be subject to administrative liability. Notaries who violate UUJN regulations may be punished in the form of written warnings, temporary dismissal, honourable dismissal, and dishonourable dismissal. These sanctions are also outlined in some provisions of the UUJN depending on the offense committed by the Notary themselves. In other to the UUJN, administrative sanctions are also regulated in the Notary Code of Ethics (hereinafter referred as to KEN) if a Notary violates KEN. Article 6, Point (1) of KEN stipulates that sanctions against members who violate KEN can be in the form of reprimands, warnings, and temporary revocation of Association membership status, honourable revocation of Association membership status, and dishonourable revocation of Association membership status.

Article 1365 of the KUH Perdata stipulates that the tort must have an element of fault. An action is considered to contain elements of fault if it meets the element of intent,

negligence, no justification or excuse, such as *overmacht*, self-defence, insanity and others. If these elements are met, then the Notary can be asked for responsibility (Sari, 2021). UUJN and KEN do not regulate the criminal responsibility of Notaries. UUJN only regulates the provisions of civil and administrative legal sanctions. Therefore, Notaries can be criminally responsible if the Notary commits an offense that meets the criminal elements as stated in the Penal Code (hereinafter referred to as KUHP). If the Notary's actions meet the elements of a crime but do not constitute an offense within the meaning of UUJN, then the Notary concerned cannot be held criminally liable. Indeed, the reference for evaluating notarized deed must be based on UUJN (Rahmadanti *et al*, 2022) ^[6].

Notaries cannot be responsible when criminal elements, such as fraud and error are committed by the parties. Misrepresentation made by the parties will subject the parties to their own liability. This means that a Notary is only responsible if fraud or other criminal elements are committed at the will and/or desire of the Notary himself (Andriana and Irawan, 2022) ^[8].

Notaries are not responsible for the mistake in the deeds they write, handed that the legal errors are due to the fault of others or due to information and substantiation given by the client. The causes of legal errors that are not the fault of the Notary, similar as the actuality of false identity, i.e. Identity Card, Family Card, Passport, Certificate of Heirship, Birth Certificate and others. If the information submitted to the Notary is a false information or forged document, deeds and bonds made before the Notary do not mean they are false. The question sent to the Notary contain truth, while lies made by the party are beyond the Notary's authority and responsibility. Indeed, a notarized deed does not guarantee that the parties are telling the truth, but what is guarantee in a notarized deed is that the parties are telling the truth, as stated in their deed of agreement. Therefore, if there is a serious problem, an investigation must be first conducted against parties who intentionally provide false information and documents to the Notary without first blaming the Notary (Ramadhan and Suhardini, 2019) ^[3].

The liability aspect of Notary is due to errors in the performance of the Notary duties and positions. The existence of such errors causes losses to other people who request Notary services. This means that to determine a Notary's guilt that causes reimbursement of costs, compensations, and interest has a requirement that the unlawful act is committed by the Notary and can be responsible. Additionally, if there is false information in a notarized deed, the Notary will not be held responsible for the contents of the deed if one party creates or uses false information. In fact, the Notary only states what happened, what he saw and experienced, and what the people involved did (Ginting, 2019) ^[7].

Conclusion

The responsibilities of Notaries at UUJN are understood as the Notaries' compliance with the provisions of law in performing the Notary duties and tasks. Legal acts in notarized documents are legal acts of the parties when entering into a contract and requesting the legal acts they perform to be recorded in authentic deeds. This means that the Notary only acts according to the wishes of the parties. Notaries who violate UUJN regulations may be punished in the form of written warnings, temporary dismissal,

honourable dismissal, and dishonourable dismissal. In the KUH Perdata stipulates that the tort must have an element of fault. If these elements are met, then the Notary can be asked for responsibility. Notaries can be criminally responsible if the Notary commits an offense that meets the criminal elements as stated in the KUHP. Notaries cannot be held liable when the parties commit criminal elements, such as fraud and error.

References

1. Aimee Thaliasya, Liza Priandhini. Pertanggung Jawaban Notaris dalam Pembuatan Akta Hibah dengan Menggunakan Keterangan Palsu. *PALAR (Pakuan Law Review)*, 2021, 7(2).
2. Bella Annisa Ardhani, Prof. Dr. Busyra Azheri SH, Hum M. Pertanggungjawaban Notaris yang Menerbitkan Akta Berisi Keterangan Palsu (Studi Kasus Perkara Nomor 1362/Pid.B/2019/PN.Jkt.Utr). *Sibatik Journal*, 2023, 2(5).
3. Eka Dadan Ramadhan, Ani Dasuki Suhardini. Pertanggungjawaban Pidana Notaris dalam Pembuatan Akta yang Didasarkan Pada Keterangan Palsu Dihubungkan dengan Kitab Undang, 2019. Undang Hukum Pidana dan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Wacana Paramarta: Jurnal Ilmu Hukum*, 2004, 18(1).
4. Habib Adjie. *Hukum Notariat di Indonesia: Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*. Bandung: Refika Aditama, 2008.
5. Habib Adjie. *Kebatalan dan Pembatalan Akta Notaris*. Jakarta: Refika Aditama, 2011.
6. Intan Rahmadanti, Herman Fikri, Fatria Khairo. Perlindungan Hukum Terhadap Notaris Berdasarkan Prinsip Based on Fault of Liability (Tanggung Jawab Berdasarkan Kesalahan). *Lex, Stricta: Jurnal Ilmu Hukum*, 2022:1(2):7.
7. Juliati Br Ginting SHMH. Tinjauan Yuridis Mengenai Akta Otentik yang Dibuat Oleh Notaris Berisi Keterangan Palsu. *Journal Justice*, 2019, 1(1).
8. Khoirotul Ummah Andriana, Anang Dony Irawan. Perlindungan Hukum Bagi Notaris dalam Pembuatan Akte Berdasarkan Keterangan Palsu dari Para Pihak. *Academos: Jurnal Hukum & Tatanan Sosial*, 2022, (1).
9. Mukti Fajar dan Yulianto Achmad. *Dualisme Penelitian Normatif & Empiris*. Yogyakarta: Pustaka Pelajar, 2010, 5(2).
10. Nur Aini, Yoan Nursari Simanjuntak. Tanggung Jawab Notaris Atas Keterangan Palsu yang Disampaikan Penghadap dalam Akta Pendirian Perseroan Terbatas. *Jurnal Komunikasi Hukum (JKH)*, 2019.
11. Reva Vergano, Sonyendah Retnaningsih. Ruang Lingkup Tanggung Jawab Notaris Terhadap Keterangan Palsu yang Termuat Pada Akta Autentik. *Jurnal Kertha Semaya*, 2022, 10(4).
12. Rizky Amalia, Musakkir Musakkir, Syamsuddin Muchtar. Pertanggungjawaban Notaris terhadap Isi Akta Autentik yang Tidak Sesuai dengan Fakta. *Al-Ishlah: Jurnal Ilmiah Hukum*, 2021, 4(1).
13. Peter Mahmud Marzuki. *Penelitian Hukum Edisi Revisi*. Jakarta: Prenada Media Group, 2013.
14. Selvi Dhian Padma Sari. Pertanggungjawaban Notaris Terhadap Akta yang Memuat Keterangan Palsu. *Officium Notarium*, 2021, 3(1).