



EFFORTS TO PREVENT ACTS AGAINST NOTARY LAW IN MAKING A DEED

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Abstract :

Notaries as public officials are given legal authority to make valid deeds into evidence without defects. Notaries who commit unlawful acts can be sued accountability based on Article 1365 of the Civil Code. The aim of this research is to discuss the forms of unlawful acts committed by Notaries in making deeds as well as the efforts made to prevent Notaries' unlawful acts in making deeds. The research method uses normative juridical and the research specifications are analytical descriptive. The data analysis method uses qualitative descriptive data analysis. The research results obtained Firstly, elements of unlawful acts were carried out by Notaries in making deeds, including by falsifying the deeds they made which were not in accordance with UUJNP. Second, efforts are made to prevent notaries from committing unlawful acts in making deeds by conducting seminars and other activities to update notary knowledge and insight in the field of law. Apart from that, they also routinely carry out regular supervision at the notary's office at least once a year to check notary protocols.

Keywords: Notary, Making Deeds, Unlawful Actions.

INTRODUCTION

The position of a Notary is regulated in Law Number 30 of 2004 concerning the Position of Notaries (UUJN), the State Gazette of the Republic of Indonesia of 2004 Number 117, as well as the Supplement to the State Gazette of the Republic of Indonesia. Republic of Indonesia Number 4432 of 2004 which came into effect on October 6 2004. Then Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJNP), as announced in the State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491, effective from January 15 2014.

Article 1 paragraph (1) UUJNP regulates that a notary is a public official who is permitted to make valid deeds and has additional authority as stipulated in this UUJNP or other laws. In Article 1 point 7 of the UUJNP it is stated that a notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary according to the form and method specified in this UUJNP (Salim, 2013). Authentic deeds, as the most convincing and complete evidence, play an important role in all legal relationships that individuals have in their lives (Budiono, 2014).

The need for written evidence in the form of authentic deeds is increasing in various business relations, activities in banking, land and social activities, among others, in response to the increasing demands for legal certainty in various economic and social relations at the national, regional and international levels. By using a valid deed that clearly states rights and obligations, it is hoped that conflicts can be avoided. Although conflict cannot be avoided, during the conflict resolution process,

Based on the Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for the Supervisory Board's Examination of Notaries, it is stated that basically authentic deeds contain formal truths submitted by the parties to the Notary. The notary is obliged to ensure that the



contents of the notarial deed are fully understood and in line with the wishes of the parties, namely by reading it and clarifying its contents, as well as by providing access to information, including access to statutory regulations, regarding the parties signing the deed. The parties are free to accept or disagree with the contents of the Notarial deed to be signed. Notaries as public officials are given legal authority to provide public services to the community, especially in the preparation of valid deeds which become flawless evidence (Budiono, 2013).

Article 1868 of the Civil Code stipulates that an authentic deed is a deed made in the form determined by law by or in the presence of a public official authorized to do so in the place where the deed was made. Based on Ministerial Regulation Number M.HH-06.AH. 02.10-2009 of 2009 concerning the secretariat of the Notary Supervisory Council, it is explained that an authentic deed is proof of perfect writing or letter. An authentic deed has three powers of justification, namely:

1. The power of external justification (uitwendige bewijskracht), namely the power of the deed to establish its authenticity as a deed.
2. Authority for formal justification (formele bewijskracht), which guarantees that an event or fact in a deed is truly known and heard by the Notary and explained by the parties involved in it.
3. The strength of material justification (material bewijskracht), namely certainty regarding the substance or contents of a deed.

Rights, obligations and guarantees of legal certainty can be clearly outlined for the parties participating in an authentic deed, or in other words an authentic deed is written evidence of a legal act that has been carried out, but has greater significance than that and can be used as a guide if in the future there are differences of opinion and disputes between the parties involved. Article 1866 of the Civil Code states that evidence consists of written evidence, evidence with witnesses,

allegations, confessions, oaths so that the presence of a Notary is needed in this matter.

The most convincing evidence is written evidence. Written evidence can be in the form of an authentic deed or a private deed, and the person who has the authority to make an authentic deed is a Notary. Notaries are very important and must have strong moral standards so as not to abuse their position and to maintain their dignity as a public official who offers services in accordance with existing regulations and does not tarnish their image. Notaries must have broad and deep insight and skills, so that they are able to become the backbone of society in designing, compiling and producing various authentic deeds, as well as ensuring that the linguistic structure, technical and juridical aspects are all in order (Adjie, 2017).

If a Notary commits an unlawful act, he can be held responsible as a public official, depending on the nature of the violation and the law resulting from it (Adjie, 2015). Republic of Indonesia Minister of Law and Human Rights Regulation Number M.01.HT.03.01 of 2006 concerning requirements and procedures for appointing, transferring and dismissing notaries regulates that notaries can be subject to sanctions, administrative, civil and even criminal sanctions as a result of the implications of negligence or violations committed by the Notary in the process of making authentic deed.

Illegal activities can occur both in the realm of public and private criminal law. Thus, the phrase can be used to refer to criminal as well as civil law. If considered against the law, these two conceptions show parallels and contrasts. The main similarity between the two conceptions of unlawfulness is that both require that a legal requirement be violated. The following similarity is that both characteristics of being against the law prioritize legal interests in principle (Agustina, 2014).

The main difference between these two characteristics is that it is against the law, the first protects public interests, objective rights, and sanctions as



punishment, while the second protects personal interests (private interest), subjective rights. and the punishment imposed is monetary compensation (remedies). To qualify as an unlawful act, there must be factors that conflict with the subjective rights of other people, with decency, with propriety, with thoroughness, and with caution. Unlawful acts in criminal law and civil law involve the distinction between public criminal law and private civil law. Criminal activities include violating public interests (along with perhaps personal interests), while unlawful acts of a civil law nature only damage personal interests (Fuady, 2017).

Issues regarding the Unlawful actions of Notaries will be studied through 2 (two) lenses. First, by using the Theory of Legal Certainty as an analytical tool, Gustav Radbruch emphasized that legal certainty means that the law is positive, which means: 1. Positive law is statutory regulations. 2. That the law is based on facts, namely on reality. 3. These facts must be stated clearly so that there are no misunderstandings and are easy to implement. 4. The positive rule must not be changed in any way. This perspective is based on the belief that legal certainty is synonymous with certainty regarding the law. Legal certainty is the result of law, or more precisely, statutory regulations (Prayogo, 2016).

Second: theory of legal responsibility. According to Kranenburg and Vegtig, there are two (two) basic conceptions of official responsibility, namely: a. The *Fautes personnelles* hypothesis states that third party losses are borne by the official whose actions resulted in the loss. According to this idea, the responsibility for accountability is placed on people. b. *Faultes de services* theory: namely the belief that third party losses are borne by official agents. According to this view, positions are allocated responsibilities. The losses incurred are also modified according to whether the error is large or small. The gravity or severity of a mistake influences the amount of responsibility that must be borne (Munaf, 2016).

According to the problems described above, the problems discussed are about the forms of unlawful acts committed by Notaries in making deeds and what efforts are made to prevent unlawful acts committed by Notaries in making deeds. Based on the searches carried out, research was found regarding Elements of Unlawful Acts Committed by Notaries in Making Deeds. However, there are significant differences between the research conducted by Pertiwi and the research in this study, namely: First, Pertiwi analyzes the notary's responsibilities when the nominee deed contains criminal activities by the parties. The author believes that Notaries can be held responsible for implementing deeds that are against the law at the civil, criminal or administrative level (Pertiwi, 2019).

Utilizing Lawrence Meir Friedman's Legal System Theory, the author develops the legal regulations needed to cancel wrongful actions committed in nominee deeds issued by Notaries (Pertiwi, 2019b). Second, Lengkong detailed in his research the illegal actions of notaries who provided false information in deeds of agreements. Considering that the main authority of a notary is to make and issue deeds, the main aim is to make an Authentic Deed which contains all activities, agreements and provisions required by law and/or requested by interested parties. In the event that the Notary does not act in accordance with his authority, the Notary can be charged with the crime of forgery of a deed as intended in Article 55 paragraph (1) number 1 jo. Article 264 paragraph (1) of the Criminal Code (Lengkong, 2017).

Third, Bernada in his writing stated that Notaries must be more careful and thorough in verifying the completeness of the documents required to make a deed provided by the parties, and be more careful in providing clear legal advice and legal counseling to clients (Bernada, 2019). In writing this article there are differences with the three writings above. What is different in the content of this writing is that the author focuses his attention on the Notary and the steps taken to prevent the Notary from committing unlawful acts while executing the deed. Thus, the author is interested in conducting legal research on this issue in



the form of an article with the title: **"Efforts to Prevent Notary Legal Actions in Making Deeds"**.

DISCUSSION

Unlawful Actions of Notaries in Making Deeds

A notary is an official who is given the authority to make a deed, especially an authentic deed. Notaries as public officials are given powers in order to serve the wider community. Notaries are a profession that offers services in the field of document legality, so they have an important role in managing documents and securities (Safithri, 2022). In essence, the purpose of making a Notarial deed is to validate the intentions of the parties. Based on the powers of the Notary as referred to in Article 15 UUJNP and the power of justification of the Notary's deed, there are 2 (two) meanings, namely: First, the role of the Notary is to translate the wishes/actions of the parties into a deed while adhering to the applicable laws and regulations.

Second, the Notarial Deed as a valid deed has complete justificatory power, so it does not require justification or supplementation with additional evidence in the event that certain people/parties judge or state that the deed is fake. Notaries are bound by the wishes of the parties, notaries also have restrictions and the authority to make deeds. Article 52 paragraph (1) and Article 53 UUJNP state that Notaries are prohibited from making deeds in certain circumstances. This prohibition only applies to the legal subjects of the parties. If statutory regulations are prohibited, then the contents of the deed (action) cannot be made.

Duties and obligations arising from legal force, whether laws or agreements, can result in accountability for implementing agreements, because each authority delegated must always be accompanied by obligations or responsibilities. The notary has the authority to make deeds, so he must be responsible for the deeds he has made, and if in the future there are any irregularities or violations in making the deed, then the Notary is required to be legally responsible for the deed he made. The deed that has been made by a notary is considered invalid or null and void by law.

The potential for fraud or abuse of authority carried out by a notary will bring and ensnare the notary in the criminal realm. The potential for notarial fraud can include, among other things, a deed made without the relevant parties present face to face, the identity data of one of the parties in the deed being falsified, data regarding the object being promised not in accordance with the actual facts, data provided by one of the parties or both parties has incorrect information, resulting in the notarial deed being made being considered fake, there are 2 (two) deeds circulating among the parties with the same number and date but the contents are different, the signature of one of the parties is forged, and the facer uses a fake identity (Chandra, 2020).

Regarding fraud or unlawful acts that may be committed by the notary mentioned above, the witnesses given to the notary according to the UUJNP are in the form of warnings and administrative witnesses as well as dismissal of the notary's position, and do not regulate criminal sanctions. Criminal sanctions carried out by notaries are subject to general criminal provisions, namely the Criminal Code (KUHP). Notaries who commit violations under the UUJNP can be subject to civil sanctions or administrative sanctions, or to the notary's code of ethics. However, in reality notaries who violate the UUJNP are drawn into the criminal realm to criminalize notaries who make fake letters or falsify deeds. Article 1365 of the Civil Code regulates that every person who commits an unlawful act is obliged to compensate for the losses arising from his or her mistake.

The Notary who makes the authentic deed, the Notary is responsible for the legal implications that arise as a result of his actions. The notary does not play a role in executing the deed, but is required to do so if the client asks for legal advice regarding legal activities carried out by the client. However, the Notary will be held responsible for material truth if the legal advice given in the future is incorrect. Civil sanctions are sanctions that can be imposed on a Notary because of his actions. Sanctions given to notaries can be in the form



of reimbursement of fees, compensation, or interest. This must refer to the legal relationship between the Notary and the parties facing the Notary, and if there are parties who directly suffer losses as a result of a deed, they can also sue the Notary in civil court. Civil penalties are regulated in Article 41 UJNP. If the Notary commits an unlawful act or violates Articles 38, 39, or 40 UJNP, then the Notary's deed only has the power of justification under his/her hand, in the form of inappropriate evidence. Likewise, if a deed is said to be null and void, it is treated as if it never existed or was never made.

The element of an unlawful act committed by a Notary in making a deed is an action that violates legal norms and thereby violates the UJNP which regulates the authority, obligations and prohibitions of a Notary in making a deed, as stated in the UJNP, namely a violation of the provisions stated in Article 84, which causes a deed to only have the power of justification as a private deed or a deed containing elements of an unlawful act, including the existence of an action, law, loss to the victim, a causal relationship between the action and the victim's loss, and the existence of a mistake.

One example of a case study of a Notary who was deemed to have carried out an action contrary to legal norms can be found in the case between I Made Sudena, CS and I Nyoman Dug Dug in the Denpasar District Court decision Number 800 of 2013. This case started with I Nyoman Dug Dug arguing that he owned a plot land with an area of 30,605 m² and without his knowledge, in 2010 he only found out that an area of 14,500 m² had been sold after the arrival of Drs. I Putu Parwata Maelia Kusuma, MM. to I Nyoman Dug Dug's land and it turned out that after I Nyoman Dug Dug reported it to the police, the person who sold I Nyoman Dug Dug's land was I Made Sudena (the Plaintiff's son) by forging I Nyoman Dug Dug's thumbprint, as if I Nyoman Dug Dug gave power of attorney to I Made Sudena to sell the land, even though I Nyoman Dug Dug never sold it and as a result of I Made Sudena's actions, I Made Sudena was declared guilty by the Denpasar District Court in

accordance with its decision dated 14 November 2011 Number: 952/Pid.B/2011/PN.Dps. which has permanent legal force.

The sale and purchase of land covering an area of 14,500 m² was carried out in the presence of PPAT Ni Luh Dewi Astini, SH. and the transfer of rights by Rudy Santoso was registered at the Badung Regency Land Office and a Certificate of Ownership No. 8584 in the name of Rudy Santoso measuring letter dated January 27 2004 No. 4323/Benoa/2004, so Ownership Certificate No. 7456 in the name of I Nyoman Dug Dug, measurement letter dated 31 May 2002 No. 2934/2002 with an area of 30605 m² has been split into Certificate of Ownership No. 8584, according to the provisions of Article 1320 of the Civil Code. Sale and Purchase Deed No. 13/2003, dated 20 May 2003 (evidence letter P.1., evidence T.I.2 and evidence T.II.2a.) as a result of not fulfilling the objective conditions of the agreement, must be declared null and void, as well as an unlawful act which is detrimental to the Plaintiff.

It should be noted from the example above that an original deed made by or before a Notary can be used as evidence for a legal dispute in order to recall events that have occurred for justification purposes. According to Article 1866 of the Civil Code, it is stated that the evidence recognized in civil cases consists of written evidence, witness evidence, allegations, confessions and oaths. Written evidence is one of many written pieces of evidence. Likewise, Article 1867 of the Civil Code reads: "Write proof is carried out using authentic writings or handwriting."

In civil litigation, a notarial deed has complete justificatory force, but if it violates certain rules, its evidentiary value is reduced to a private deed. If the Notary makes a mistake which makes the deed he signs a private deed or the deed becomes null and void, then this will result in losses for the client or other parties. As a result, the Notary can be held responsible/civil sanctioned for the mistakes he or she makes. These civil sanctions can be in the form of reimbursement of costs, compensation, or interest



which must be based on a legal relationship between the Notary and the parties who appear before the Notary, and if there is a party who directly suffers a loss from a deed, they can also sue the Notary in a civil manner. .

In reality, the notary's negligence in issuing or making the deed, results in the deed's justification power being reduced or becoming null and void by law. This legal problem can occur at that time or years later, when the minutes of the deed are stored in another Notary's protocol. Notaries can handle civil legal obligations due to the legal difficulties mentioned above. The Denpasar District Court Decision Number 800 of 2013 stated that one of the examples of the Notary cases above was where the notary acted contrary to legal standards and violated the law.

If the Notary violates legal standards when executing the deed, several parties may suffer losses, especially plaintiffs. The defendants, including the Notary, must compensate the plaintiff for these losses, and every letter issued by the Notary will be null and void. Both parties in this matter have tried to resolve it through contemplation, but there has been no conclusion, and this matter has also reached the Court. In this case, the court cancels the notarial deed. Both parties in this matter have tried to resolve it through contemplation, but there has been no conclusion, and this matter has also reached the Court. In this case, the court cancels the notarial deed.

Efforts to Prevent Unlawful Actions by Notaries in Making Deeds

Unlawful acts committed by notaries related to making authentic deeds often become a problem for one party or another person because they are deemed not to benefit their interests, thus giving rise to legal claims by parties who feel disadvantaged. The existence of claims in a deed that are deemed to be detrimental to one of the parties causes legal claims to arise against the person who made the deed. In relation to the notary's responsibility for the deed he has made, if a mistake is made by the notary and is legally proven, the notary will receive legal sanctions, namely

sanctions according to the UUJNP and can even be punished according to the Criminal Code.

Notaries who are unable to maintain the dignity and responsibility of their position can face moral sanctions, censure, or be honorably dismissed from their professional membership, and worst of all, they can be dishonorably dismissed from their position as a Notary. Sanctions against notaries who violate the law are actually a way, effort and instrument to enforce compliance and discipline of association members, as well as to uphold and carry out the position of Notary, in upholding the code of ethics of associations and organizations.

Sanctions imposed based on the Notary's code of ethics are limited to organizational and administrative sanctions. Sanctions are regulated in Chapter IV Article 6 which states that members who violate the code of ethics may be subject to reprimand, reprimand, suspension from the association, dismissal (onzetting) from the association, and dishonorable dismissal from the association. Sanctions imposed on members who violate the code of ethics are adjusted to the scope and severity of the error committed. The Notary Honorary Council examines and imposes penalties for alleged violations of the code of ethics committed by notaries.

In carrying out guidance, the Minister of Law and Human Rights of the Republic of Indonesia formed an honorary council of Notaries. Apart from providing guidance, the minister also carries out supervision which includes the behavior of Notaries and the implementation of the Notary's office. The Supervisory Council formed consists of the Regional Supervisory Council formed in the Regency/City, and the Regional Supervisory Council. The Notary Supervisory Council in order to carry out supervision to prevent violations of the Notary's position include (Madyastuti, 2020): Holding seminars related to notarial duties, Holding regular monthly meetings attended by the Regional Supervisory Council to provide direction so that they can work by always complying with UUJNP and the Code of Ethics ,



Notaries are required to always update their knowledge and insight in the field of law, especially notarial matters. The Regional Supervisory Council also visits the Notary's office at least once a year to check the Notary's protocol.

To prevent violations of the Notary's position, supervision carried out by the Notary Supervisory Board is passive. Supervision only waits for reports from the public and does not carry out direct supervision with notaries one by one. Notaries who are suspected or proven to have committed violations of their position will then undergo guidance, which may include sanctions. The imposition of sanctions will be adjusted based on the level of the violation so that the sanctions given can be either heavy or light.

If a Notary commits a minor violation, the Notary Honorary Council or Notary Supervisory Council will issue a warning and provide a solution or direction so that the Notary does not commit a violation in the future. If a notary commits an unlawful act, he or she may face civil, criminal, official, ethical and administrative sanctions. Apart from that, the letter of appointment of a Notary from the Minister of Law and Human Rights of the Republic of Indonesia can be revoked, and the Notary can be removed from his position. Sanctions are given as an effort to prevent and eliminate prohibited activities carried out by Notaries in carrying out a deed (repressive).

Apart from that, the legal protection that can be given to notaries (positions) is regulated in Article 66 UUJN. Article 66 UUJN regulates the establishment of the Ministry of Justice, which includes representatives of notaries, the government and the academy, which acts as a legal protection institution for the notary profession. The existence of the Notary Honorary Council should be able to provide the best legal assistance to Notaries in carrying out their duties as a legal protection organization. Regarding the right to work and forms of legal protection from the honorary board of notaries, it is not clearly regulated in the UUJNP or other laws. The Notary Honorary Council functions as an independent body in providing legal

protection to notaries, because the Notary Honorary Council is not part of the government that appointed them. The Department of Justice is not influenced by other parties or organizations in making its decisions.

UUJNP states that if a Notary is suspected of being involved in violating the law relating to or previous actions, investigators, public prosecutors, or judges must be notified by the Notary Honorary Council when summoning the notary. As stated in Article 66 paragraph (1) UUJNP, namely: for the purposes of judicial proceedings, examiners, public prosecutors or judges are authorized by the Notary Honorary Council to examine: a) Scan the minutes of deeds. as well as/or documents attached to the notary's minutes of deed or protocol in the notary's custody; and b) summon the notary to attend the examination of the deed or notarial protocol supervised by the notary.

According to the provisions contained in Article 66 paragraph (1) UUJN, it can be seen that investigators, prosecutors and judges only have the authority to take: 2. Investigators, public prosecutors and judges do not have the power or authority to take original documents attached to contract instructions and /or minutes of the notary process in the notary's custody. To be able to participate in the examination of public documents, notarial letters from auditors, public prosecutors or judges must be approved by the Notary Honorary Council, because currently the Notary Honorary Council is a legal protection institution for notaries. There is an agreement between the Notary who is suspected of committing an error or criminal act in the process. So it will be safer if all calls, checking evidence and recordings are carried out with permission from the professional organization that checks them first, if in the end there are rules based on the principle of trust for the community (Adjie, 2013).

The function of the Notary's Honorary Council in providing legal protection to Notaries for the activities they carry out in connection with Notary's duties is an independent body, because the existence of the Notary's Honorary Council is not an isolated part of the government. The Notary Honorary Council is not



influenced by other parties or organizations in making its decisions, so that the decision of the Notary Honorary Council in this case cannot be contested.

Based on the things above, it can be seen that legal protection for notaries for the work they have carried out is related to the notary's responsibilities if the notary's warning report is approved by investigators, public prosecutors and judges, it needs to be carried out by the Notary's Honorary Council. Legal protection through the Honorary Council of Notaries is necessary for the realization of protection and guarantees of achieving legal certainty.

CONCLUSION

Forms of unlawful acts committed by notaries in making notarial deeds include: deeds made without the presence of the relevant parties face to face, identity data of one of the parties in the deed being falsified, data regarding the object being agreed upon not in accordance with the actual facts, the data provided by one of the parties or both parties is incorrect, resulting in the notarial deed being made being considered fake, there are 2 (two) deeds circulating among the parties with the same number and date but the contents are different, sign the hand of one of the inside parties is forged, and the facer uses a false identity. Notaries who commit violations under the UUJNP can be subject to civil sanctions or administrative sanctions, or the code of ethics for the notary position, but can also be drawn into the criminal realm to criminalize notaries who make fake letters or falsify deeds.

The Notary Supervisory Council in order to carry out supervision to prevent violations of the Notary's position, among other things, by holding seminars related to notarialism, holding regular meetings every month which are attended by the Regional Supervisory Council to provide direction so that they can work by always complying with UUJNP and the Code of Ethics, Notaries are required to always updating knowledge and insight in the field of law, especially notarial matters, and the Regional Supervisory Council visits the Notary's office at least

once a year to check the Notary's protocol. A notary who violates the law regarding his responsibilities in making/issuing a deed, if this negligence can be legally proven, then the notary will receive legal sanctions, namely sanctions according to the UUJNP and can even be punished according to the Criminal Code.

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