

Legal Protection of The Notary In The Production of A Notarial Deed

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ABSTRACT

Along with the development of increasingly modern life, which is characterized by increasing legal relations in written form between fellow citizens, social institutions, and government institutions, the function of a Notary becomes increasingly important, especially in terms of making authentic deeds that can provide legal certainty for the parties. interested parties, parties who receive rights, and their heirs. The courage referred to here is the courage to carry out correct legal actions by applicable laws and regulations through the deeds that are made and firmly reject the making of deeds that are contrary to law, morals, and ethics. Data analysis was carried out descriptively and qualitatively. Concluding is carried out using a deductive method from general to specific, specifically those related to the research topic, namely Legal Protection of Notaries in Making Notarial Deeds. This research resulted in the finding that Notaries are public officials who, according to Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN, are given the authority to make authentic deeds regarding all acts, agreements, and stipulations required by statutory regulations and/or as desired. UUJN-P only regulates the provisions for administrative and civil sanctions. However, the Notary's criminal responsibility is imposed if the Notary is proven to have committed a criminal act. If a criminal offense is committed by a Notary, the Notary may be subject to criminal sanctions based on the Criminal Code, while there are several notes that such penalties can be imposed on the Notary.

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1. Introduction

A Notarial Deed has perfect evidentiary power in civil lawsuits, but if it violates certain provisions, its evidentiary value will be degraded to having the evidentiary power of a private deed. A notary who is proven to have made a mistake resulting in the deed he made only having the power of proof as a private deed or being null and void will cause losses to the client or other parties (Fahrojih, 2016). Therefore, the Notary can be held responsible for his mistakes and is obliged to provide compensation, costs, and interest to the parties who suffer losses. Law on the Position of a Notary in issuing a deed. This causes errors to arise, especially when a notary makes changes to the minutes of the deed after a copy has been issued. The result of a violation committed by a notary can cause losses for one of the parties, where the notary has been negligent in carrying out his duties and this was done intentionally or unintentionally, jointly by the party/person who made the deed with the aim and intention of benefiting one. one party/facer or harms another facet.(Sri Endah, 2017)

Authentic deeds as written evidence that have perfect evidentiary power (the strongest and fullest), have a very important role in every legal relationship in social life, namely in the economic and social fields. The demand for legal certainty in the field of social relations and the economic field, both at the national, regional, and international levels, has resulted in an increasing need for authentic deeds as written evidence. A notary is a public official who, according to Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN, is provided the authority to make authentic deeds regarding all acts, agreements, and stipulations required by statutory regulations and/or as desired (Dyani, 2017).

Along with the development of increasingly modern life, which is characterized by increasing legal relations in written form between fellow citizens, social institutions, and government institutions, the function of a Notary becomes increasingly important, especially in terms of making authentic deeds that can provide legal certainty for the parties. interested parties, parties who receive rights, and their heirs. In other words, as a legal country (rechtstaat), Indonesia is very interested in the existence of professional Notaries (Diatmika et al., 2014). The state's interest in the existence of a professional Notary can be seen in the explanation section of the UUJN, which states the importance of the existence of a Notary, namely related to making authentic deeds. Making authentic deeds is required by statutory regulations in the context of legal certainty, order, and legal protection for the people who need it(Julia, 2019).

In carrying out his position, a notary must be able to act professionally based on a noble personality by always carrying out his duties by applicable laws and regulations while at the same time upholding the notary's professional code of ethics as a guideline that must be obeyed (Afifah, 2017). Notaries need to pay attention to what is called professional behavior which has the following elements: (1) having strong moral integrity; (2) being honest with clients and oneself (intellectual honesty); (3) being aware of the limits of their authority; and (4) not based solely on monetary considerations. Article 16 letter a of Law Number 2 of 2014 concerning the Position of Notaries (UUJN) determines that notaries are obliged to act honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal actions. In addition, notaries as public officials must be sensitive, responsive, have sharp thinking, and be able to provide appropriate analysis of every legal phenomenon and social phenomenon that arises so that this will foster an attitude of courage in taking appropriate action. The courage referred to here is the courage to carry out correct legal actions by applicable laws and regulations through the deeds that are made and firmly reject the making of deeds that are contrary to law, morals, and ethics (Muhammad Ilham, 2017).

The position of Notary is a position of trust, therefore a Notary must have good behavior which is guaranteed by law, while the law has mandated associations to establish a Code of Ethics. Good Notary behavior is based on the Code of Ethics, thus the Code of Ethics regulates things that are adhered to by a Notary in carrying out his office and also outside his office. self-promotion, both individually and collectively by including their name and position, using print and/or electronic

media in the form of advertisements, congratulations, condolences, thanks, marketing activities, sponsorship activities in the social, religious and sport." Apart from that, Article 40 of Law Number 19 of 2016 Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions also explains that the government only facilitates the use of information technology and electronic transactions by the provisions of the law and the government is obliged to prevent the dissemination of information technology. and electronic transactions that do not comply with statutory provisions (Sholikhah & Hafidz, 2017).

Notaries are bound by certain obligations and prohibitions that have been determined in the Law concerning the Position of Notaries which has now been amended into the Law of the Republic of Indonesia Number 2 of 2014 and the Code of Ethics for the Office of Notaries. Therefore, every Notary cannot be separated from sanctions if he violates applicable laws and regulations. In Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notaries, it is regulated that when a Notary is proven to have committed a violation in carrying out his duties and position, the Notary can be subject to or be subject to sanctions in the form of civil, administrative sanctions and the Notary's code of ethics. These sanctions have been regulated in such a way both in the Law of the Republic of Indonesia Number 2 of 2014 and the Code of Ethics for the Position of Notary (Syahrul, 2019). The Notary Public Law does not regulate criminal sanctions against Notaries. However, in practice, it is found that a legal action or violation committed by a Notary regarding an authentic deed s/he has made is qualified as a criminal act.

One of the things related to the obligations of a Notary is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) is Article 16 paragraph (1) letter m which states "in carrying out his position, the Notary obligatory: reading the Deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) certain witnesses for making a Deed of Will privately, and signed at that time by the presenter, the witness and the Notary." A notary is a public official who is given authority by the State to make authentic deeds. The authority of a Notary is regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN-P) which concerns all forms of acts, agreements, and provisions required by statutory regulations and/or as desired by the interested party to be stated in an authentic deed (Utama & Anand, 2018).

Legal protection for the position of Notary is regulated in Article 66 paragraph (1) UUJN-P which regulates the institution of the Notary Honorary Council (MKN) as a legal protection institution for Notaries (Putra & Anand, 2018). The authority of the MKN is to approve or reject requests from investigators, prosecutors, or judges who wish to summon and examine a Notary in court. This authority was previously the authority of the Regional Supervisory Council (MPD), which has now been declared no longer valid based on Constitutional Court Decision Number 49/PUUX/2012. Regarding the regulation of the position and forms of legal protection provided by the MKN to Notaries, it is not yet clearly regulated in statutory regulations. It arose to unclear norms in law enforcement regarding the position of Notary related to allegations of malpractice committed by Notaries in the process of making authentic deeds. (Nurjannah, 2018)

2. Materials and Methods

This type of research is descriptive research. The approach used is a qualitative approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively (Sugiyono, 2013). Concluding is carried out using a deductive method, namely concluding from general to specific, especially those related to the research topic, namely Legal Protection 1.

Legal Protection for Notaries in Making Notarial Deeds. Qualitative data analysis is carried out if the empirical data obtained is in the form of a collection of words and not a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observations,

document instances, and recording tapes).(Moleong, 2021). It is usually processed first before being used in qualitative research, including the results of interview transcripts, data reduction, analysis, data interpretation, and triangulation. (Amirudin, 2010).

3. Result and Discussion

Legal Protection for Notaries in Making Notarial Deeds

If there is a Notary who is suspected of making a mistake (alleged malpractice) in the process of making an authentic deed, even though the Notary has carried out his duties and authority by legal regulations (by UUJN-P, and the Notary Code of Ethics), then MKN must provide legal protection to the Notary concerned by summoning and examining the Notary to ask for information before giving approval or rejecting the request submitted by the investigator who wishes to examine the Notary. In this case, it does not rule out the possibility that some parties or clients come before the Notary with bad intentions, such as, when they go before the Notary to ask for an authentic deed to be made, they use a fake identity or a fake letter or document, so that the Notary tries to help to formulate the party's wishes into an authentic deed can result in legal problems and can even be accused of participating in or assisting in committing a criminal act. While the UUJN-P does not specifically regulate the criminal responsibility of a Notary for the deed he or she has made, in practice, it is found that a legal action or violation committed by a Notary can be subject to administrative or civil sanctions or the Notary's Code of Ethics, but then withdrawn or qualified as a criminal act committed by a Notary.

Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notaries does not regulate the criminal responsibility of Notaries for deeds they make if they are proven to have violated criminal law. UUJN-P only regulates the provisions for administrative and civil sanctions. However, the Notary's criminal responsibility is imposed if the Notary is proven to have committed a criminal act. If a criminal offense is committed by a Notary, s/he may be subject to criminal sanctions based on the Criminal Code, there are several notes that such penalties can be imposed on the Notary.

As part of several kinds of efforts by the government in a country through available legal means. This includes helping legal subjects recognize and understand their rights and obligations as well as dealing with problems of difficulty in obtaining infrastructure and means to obtain their rights. The government represents the state, as is the goal of the state itself, the government must ensure the implementation of rights and obligations, as well as protect all nations within a country and realize social justice for all the people of that country, which is included in the meaning of legal protection. This research uses the theory of legal protection because the law protects a person's interests by allocating power to him, to act in his interests, and it is the target of rights.

Criminal law as part of public law emphasizes the public interest of society. The criminal law emphasizes a person's actions that are set aside or violated. This prohibition is accompanied by threats and sanctions in the form of certain penalties for those proven to violate it. In this case, the crime imposed on the Notary is an act carried out by the Notary in his capacity as a public official who has the authority to do deeds and not in the context of an individual as a citizen in general. The Law on Notary Positions regulates that when a Notary is proven to have committed a violation in carrying out his/her official duties, the Notary can be subject to or be subject to sanctions, in the form of civil, administrative sanctions, and the Notary's code of ethics. The Law on Notary Positions and the Notary Code of Ethics do not regulate criminal sanctions against Notaries. However, in practice, it is found that a legal action or violation committed by a Notary can be subject to administrative or civil sanctions or the Notary's code of ethics but is then withdrawn or qualified as a criminal act committed by the Notary.

Legal Protection for (Position) Notaries in carrying out their duties as Public Officials as regulated in Law Number 30 of 2004 concerning the Position of Notaries and Law Number 2 of 2012 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries which are

specifically related to the making of a Deed, it is regulated in the provisions of Article 4 paragraph (2) and Article 16 paragraph (1) letter f of Law No. 2 of 2014 concerning the obligation of a Notary to maintain the confidentiality of the deed he or she makes to protect the interests of all parties related to the deed. This is stated in the Elucidation of Article 16 paragraph (1) letter f of Law Number 2 of 2012 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Implications of Legal Protection for Notaries in Making Notarial Deeds

The Notary Supervisory Council and the Honorary Council not only carry out supervision and examination of Notaries but also have the authority to impose certain sanctions on Notaries who have been proven to have committed violations in carrying out the duties of the Notary position. The sanctions given by MPW are sanctions in the form of verbal warnings or written warnings. The sanctions given by the MPP are in the form of temporary dismissal, honorable dismissal, and dishonorable dismissal. Meanwhile, the Honorary Council has the authority to impose sanctions in the form of warnings, warnings, suspension, dismissal from INI membership, and dishonorable dismissal from INI membership. To smooth the investigation process, the Indonesian National Police, the Indonesian Notary Association (INI), and the Association of Land Deed Officials (IPPAT) have collaborated since 2006 regarding the implementation of summons and examinations of Notaries/PPATs. This form of cooperation is stated in the memorandum of understanding between the National Police of the Republic of Indonesia and the Indonesian Notary Association, namely Number. Pol: B/1056/V/2006 and Number 01/MOU/PP-INI/V/2006 dated 9 May 2006, memorandum of understanding between the State Police of the Republic of Indonesia and the Association of Land Deed Officials Pol Number: B/1055/V/2006 and number 05/PP-IPPAT/V/2006 dated 9 May 2006 concerning Development and Improvement of Professionalism in the Field of Law Enforcement.

In the Criminal Procedure Code (KUHAP) Article 112 regulates the summoning of witnesses or suspects and Article 43 concerning the confiscation of letters or other writings explains the process of summoning witnesses or suspects and the confiscation of letters. If a Notary is summoned to carry out an investigation, the Notary is obliged to attend the investigator's summons. Meanwhile, confiscation of letters or writings, including deed minutes, and letters attached to deed minutes which must be kept and kept secret by the Notary, can only be done with special permission from the Head of the local Court. Talking about responsibilities, the Notary has responsibility in the process of making the deed. This responsibility consists of civil and administrative responsibility as contained in the JN Law and criminal responsibility. Often a Notary is reported to have committed violations in making a deed. However, the aspects accused of notaries are often incorrect.

The rules contained in the Code of Ethics are sometimes not respected. Compliance with the Notary Code of Ethics is always due to the negative influence of being an individual in society and working relationships within professional organizations. Being internally confident that the individual Notary himself may also be due to his human nature, for example, the nature of consumerism or the values he obtains in carrying out his profession as a Notary. Meanwhile, external factors may be due to the cultural environment surrounding the Notary. The application of sanctions is very important to realize professionalism, therefore, when existing sanctions have not made a major contribution to increasing the professionalism of Notaries' work, then there should be additional sanctions imposed which must first be agreed upon by fellow Notaries, namely sanctions in the form of fines because fines of course also have a direct effect when a Notary commits a violation related to the Notary Code of Ethics. However, many people don't know for sure about the advantages of notaries, so there are still many people who do not use the services of a notary to make legal acts that must be made authentic so that problems do not arise. Even if anyone knows, there are still many who think that notaries are only for the elite, so in reality, there are still many in remote areas who don't understand and are even afraid of dealing with notaries.

4. Conclusion

A notary is a public official who, according to Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN, is given the authority to make authentic deeds regarding all acts, agreements, and stipulations required by statutory regulations and/or as desired.

UUJN-P only regulates the provisions for administrative and civil sanctions. However, the Notary's criminal responsibility is imposed if the Notary is proven to have committed a criminal act. If a criminal offense is committed by a Notary, the Notary may be subject to criminal sanctions based on the Criminal Code, while there are several notes that such penalties can be imposed on the Notary.

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