

Notary Liability on Contract Renegotiation in Business Contracts

Ni Nengah Dwi Dharmayanthi^{1*}, Benny Djaja², Maman Sudirman³

Universitas Tarumanagara, Indonesia

Email: dharmayanthi1987@gmail.com

*Correspondence

ABSTRACT

Keywords: business contract deed, notary responsibilities, contract renegotiation.

A notary is a public official who is given the mandate to make authentic deeds, one of which is through business contracts. In practice, business contracts often experience various updates for one reason or another. As part of a notary's duties to make business contract deeds, the notary also has the responsibility to ensure that all procedures and contract clauses do not conflict with the law. This research will discuss considerations about the role of notaries in preparing business contract documents, potential sources of disputes related to the implementation of business contracts and provisions for resolving disputes related to business contract deeds. To discuss this problem, an empirical juridical approach will be used through analytical descriptive research. The research concludes that the presence of a notary takes into account the interests of the parties when drafting business contract deeds so that they can anticipate possible conflicts that may arise. The authenticity of a notarial deed becomes absolute with the commitment of the parties concerned to continue to rely on consultation and agreement in resolving disputes that may arise.



Introduction

Covenants are essentially a form of the source of the engagement. The difference between an agreement that originates from an agreement and an agreement that originates from the law is the legal consequence of the binding legal relationship (Ngaini, 2024). The legal consequences of the agreement that originate from the agreement are the goals of the parties because the agreement is formed with the agreement of each party, but the agreement arising from the existence of a law can be possible that the parties do not want legal consequences to occur (Puspawati, 2023). The agreement is binding on both parties and is valid to the extent that it is intended by the parties or otherwise determined by national law (Sari, 2017).

Notaries providing services to the community, are subject to the Office Regulations and the Notary Professional Code of Ethics considering that notaries hold a noble profession (*nobile officium*). This noble professional predicate exists because notaries are

closely related to humanity, considering that the deeds formed by notaries are used as a legal basis for the status of property and obligations and rights of a person (Lestari & Santoso, 2018).

The notary profession requires responsibility in regulating both the written and the authenticity of the legal relationship of each party who will enter into a consensus agreement (Haryana, 2016). The notary is placed in a position as a legal aid provider to provide input on the legal certainty of each party from the agreed agreement. Not without reason, this is based on the provisions of Article 16 paragraph (1) letter (e) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Notary Position. In this article, it is explained that when a notary exercises his or her office, he is obliged to provide services by the provisions of this law, unless there is a reason for refusal (Haryana, 2016).

Notaries can also provide free services to the underprivileged. This is what is mandated by Article 37 of the Notary Position Law, where notaries are obliged to provide free services (legal services) to the underprivileged, and all violations can be subject to certain sanctions. This obligation is also based on Article 3 paragraph (6) of the Notary Code of Ethics published in 2015, where this notary is obliged to prioritize service for the interests of the state and society (Rachma, 2023). Considering the two foundations mentioned above, it is the reason why notaries get the *nobile officium* predicate and are required not to take sides or be neutral.

In carrying out their obligations, notaries are appointed and dismissed by the government, in this case, the minister in charge of notary affairs as regulated by Article 2 of the Notary Position Law. Although administratively notaries are appointed and dismissed by the government, notaries are subordinate to the institution that appoints them, in this case, the government.

The obligation of a notary has a philosophical basis, namely as a maker of authentic deeds and other deeds to provide legal certainty for legal acts carried out by legal subjects, as conveyed by Salim HS.

Based on Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the 2014 UUJN), Notaries as public officials are authorized to make authentic deeds. An authentic deed, according to the law under the provisions of Article 1868 of the Civil Code, is "... a deed made in the form prescribed by law by or before the public official authorized for it in the place where the deed is made." Article 1868 of the Civil Code (KUHPperdata) means that for a deed to have the power of authentic evidence, there must be an authority from a Public Official, in this case, a Notary, to make an authentic deed sourced from the law.

A notary as a public official is obliged to understand and comply with all applicable laws and regulations. In carrying out his office, a Notary is not only required to have legal expertise but must also be based on responsibility and appreciation of the nobility of his dignity and the nobility of his office. The position of Notary is a position of trust, and as a confidant, it is appropriate for a Notary to uphold the confidentiality of the Notary

position, namely to keep secret everything that is notified to him related to the making of a deed. This is in line with oath (promise) 2 which must be said by a Notary.

According to the applicable law, for violations of the confidentiality of the position of a Notary, a Notary can be subject to sanctions in the form of warnings up to disrespectful dismissal from his position as a Notary based on the provisions of the 2014 Constitution,³ and can also be subject to criminal sanctions as regulated and threatened with punishment in the provisions of Article 322 paragraph (1) of the Criminal Code (KHUP), stating that: "Whoever deliberately discloses secrets that he must keep because of his position or livelihood, both current and past, is threatened with imprisonment for a maximum of nine months or a fine of up to nine thousand rupiah."

Departing from this reality, and to provide legal protection for Notaries on the disclosure of the confidentiality of the Notary position related to the deeds made by the Notary, the Notary Honorary Council was formed based on the mandate sourced from the provisions of Article 66A of the 2014 UUJN, which is further regulated based on the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Assembly (hereinafter referred to as Permenkumham Number 7 of 2016).

Based on this, it raises the question that with the disclosure of the confidentiality of the Notary position, the Notary should be obliged to maintain the confidentiality of the position (Article 16 paragraph (1) letter f of the 2014 Constitution), that I will keep confidential the contents of the deed and information obtained in the exercise of my office, and that I will be able to be appointed to this position, either directly or indirectly, under any name or pretext, never and will never give or promise anything to anyone." ³ Indonesia (b), Law on Amendments to Law No. 30 of 2004 concerning Notary Positions, Law No. 2 of 2014, ps. 16 paragraph (11), basically states that Notaries who violate the confidentiality provisions of the Notary office can be subject to sanctions in the form of (a) written warnings; (b) temporary suspension; (c) honourable dismissal; and (d) dishonourable dismissal.

Research Methods

In this study, a research methodology will be used that is sourced from legal norms in laws and regulations that are used as the normative basis for research, or it can be referred to as normative legal research. Furthermore, the research by applying normative legal research methodology is based on the written norms of the published laws and regulations.

The researcher will also review the application of normative law research methodologies with the existence of a normative system that is closed, independent, and not bound to the real life of society.⁸ On this basis, normative law research can also be called doctrinal research which examines the implementation of norms and rules in positive law.

As the material for the study and source of this study, secondary data is also used which includes primary, secondary and tertiary legal materials. First, the primary legal

material will refer to the Civil Code and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

Results and Discussion

Notaries in exercising their authority are appointed by the state to make and ratify a deed or agreement. Even notaries are not allowed to make deeds when there is no request. The notary deed is mandatory to be written and readable and must meet the provisions of the applicable laws. Referring to article 1868 of the Civil Code, a deed is made and inaugurated which is based on the law, its creation is carried out in the presence of public officials.

Furthermore, Article 1868 of the Civil Code regulates the existence of elements of the act, namely:

1. A deed that has been legally formed according to its form according to the law.
2. The deed in question is made by or in front of a public official.
3. The deed in question is formed in the same place and faces the authorities.

A notary is a public official with the authority to make authentic deeds as long as the authentic deeds are not given the authority to make them by other public officials. The creation of authentic deeds is required by laws and regulations to accommodate justice, order, certainty and legal protection for the party who makes it. This legal protection is realized by ensuring the rights and obligations of each party present before the notary to ensure that the rights and obligations of the parties are by and do not violate the law.

As a public official, notaries are legally obliged to submit and follow the rules contained in the Notary Position Law. Notaries should act neutrally, fairly, honestly, and protect the interests of the parties and be independent as mandated by Article 16 of the Notary Position Law. Therefore, notaries are required to be thorough and act carefully and carefully to carry out the procedure for making authentic deeds. In detail, Article 16 of the Notary Position Law states as follows.

1. Act in trust, honesty, thoroughness, independence, and impartiality, and safeguard the interests of parties related to legal acts.
2. Make a deed in the form of a deed minus and keep it as part of the notary protocol.
3. Attach letters and documents as well as the fingerprints of the person facing the deed minute.
4. Issue a grosse deed, a copy of the deed, or an extract of the deed based on the minutes of the deed.
5. Providing services by the provisions of this law, unless there are grounds for refusing
6. Keeping everything confidential about the deeds made, as well as all information obtained in the preparation of the deeds by the promise or oath of office, unless otherwise specified in this law.
7. Binding deeds that have been made in 1 month into a book that does not contain more than 50 deeds, and if the number of deeds cannot be contained in one book, the deed can be bound into more than one book, and record the number of deeds, month and year of making deeds in the cover of each book.

8. Make a list of protest deeds against non-payment or receipt of securities.
9. Make a list of deeds related to wills according to the order of the time of making the deed each month.
10. Sending a list of deeds and nil lists related to wills to the will centre list of departments whose duties and responsibilities are in the field of notary within 5 days in the first week of each subsequent month.
11. Record in the repertory the date of submission of the will list at the end of each month.
12. Have a stamp/stamp that contains the state emblem of the Republic of Indonesia and in the space that surrounds it is written the name, position and place of the position concerned.
13. Reading the deed in front of the witness with the attendance of at least 2 witnesses or 4 special witnesses for the making of a will deed under hand, and signed at the same time by the witness, the assessor and the notary.
14. Accepting internships for notary candidates.

Seeing the enactment of Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position, notaries are given a mandate as an executor of government authority, as public officials regulated by law to make authentic deeds or ratify deeds made before a notary, and in place, the deed is made. Thus, the notary is responsible for the notary's duties in the form of making deeds, legalizing deeds under hand and making gross deeds and the right of the notary to issue deed derivatives and copies of deeds to the authorities. Nevertheless, the responsibility of notaries in practice is broader than what is regulated by law. The notary is also responsible as a legal advisor and (informally) can be asked for his statement as a consultant in carrying out procedural obligations.

Thus, the authenticity of the deed is something that needs to be considered by notaries in providing their services to the community. One of the links of the deed is the renegotiation of business contracts. Renegotiation is a process of renegotiation. Which is bound by the provisions of the Pacta Sur Servanda principle (Haryanto, 2023). This principle means that all agreements that are legally agreed upon, then apply as law for the party who makes them. Meanwhile, a contract is defined by Article 1313 of the Civil Code as an agreement is an act in which one or more persons bind themselves to one or more other persons. Subekti in his book Law of Covenants adds that a contract is an event in which there is a person who promises someone else or the two people promise each other to do something, from that event, then a relationship arises between the two called an engagement.

In a business contract, there is a possibility of default or breach of promise. Default is the non-fulfilment of achievements and/or negligence in carrying out obligations as stipulated through an agreement made between the debtor and the creditor, so that default includes doing something that is prohibited by the agreement, not complying with the agreement, or being relinquished in doing the agreed thing (Al Kautsar & Apriani, 2022). The Criminal Code mandates in Article 1243 that the party who commits a default is required to reimburse compensation, costs and interest due to the non-fulfilment of an

agreement due to a breach of promise not to implement the contents of the agreement. Furthermore, default is associated with circumstances that due to negligence, the debtor cannot fulfil the achievements that have been agreed upon in the agreement outside of the existence of force majeure.

Default is different from a force majeure situation. Force majeure is a situation where the debtor is unable to fulfil his achievements or obligations to the creditor after the conclusion of the agreement, so that the debtor can not be blamed and is not obliged to bear the risk and the debtor does not predict at the time of the agreement the consequences of circumstances beyond the debtor's control, such as earthquakes, tsunamis, and so on. The elements of a compelling state can be summarized as follows:

1. An unexpected opportunity.
2. Accountability is not mandatory for debtors.
3. The absence of bad faith from the debtor.
4. There are unintended circumstances for the debtor.
5. A situation that makes the debtor unable to carry out his achievements.
6. If the achievement is carried out, then it will be banned.

One example of a default provision that requires a renegotiation of the contract is related to the contract of work and mineral and coal mining. The renegotiation of the work contract is due to criticism related to the work contract where financial losses for the state are caused by the existence of the work contract, especially related to the amount of taxes and royalties (contributions) that apply to investors. The viewpoint brought by investors is that the renegotiation of a work contract as a purely civil contract has a voluntary nature so it is based on the voluntariness of each party to agree to change the content of the work contract through the process of renegotiation of the work contract. The government, on the other hand, is of the view that the renegotiation of work contracts as a civil public contract has a mandatory nature. This difference in practice can hinder notaries from participating in contract renegotiation.

Notaries as public officials, based on Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position have the authority to make authentic deeds related to all acts, agreements, and determinations required for laws and regulations and (which are desired) by interested parties to be stated in authentic deeds to ensure the certainty of the date of making the deed, The storage of the deed, the giving of the grose, the copy and the quotation of the deed, as a whole, as long as the deed is not also assigned or omitted to other officials or other persons prescribed by law (Nurlaela, 2020).

The notary to carry out his responsibilities, referring to the law, in this case, are the conditions for the validity of the agreement regulated by Article 1320 of the Civil Code, as (1) made in the form prescribed by law, (2) made in the presence of an authorized official, (3) a deed formed by or in the presence of a public official authorized for it and in the place where the deed is made (Purnayasa, 2018). Moral responsibility for notaries including honesty, thoroughness and neutrality of notaries in making contract deeds is

necessary, considering that notaries are bound by the oath of office and the notary's code of ethics in providing their services, as a public official.

A notary deed is an authentic deed that is used as the strongest and most important proof tool in each legal relationship of each party in a business contract. The presence of an authentic deed brings legal certainty to the parties which can hopefully help avoid disputes in the future. If a dispute occurs, an authentic deed can be used as the strongest and most complete written proof tool in the process of resolving a dispute.

The notary's contribution to contract renegotiation is in the form of providing facilities for each party, in this case, the neutrality of the notary who receives input from each dispute faced by each party so that the notary plays the role of an advisor and legal input for the disputing parties. The advice includes recommendations for alternative dispute resolution, mediation to find common threads of problems, formulating procedures and listening to the intentions of each party based on applicable legal provisions. The notary does not escape his responsibility in renegotiating the contract to ensure that what has been contained in an authentic deed has been truly understood, by the intentions of the parties and does not violate the applicable law (Kosasih & Haykal, 2021).

The responsibility of the notary in ensuring all facts in the renegotiation of the contract is bound by Article 16 of the Notary Position Law which requires the notary to act honestly, independently, thoroughly, and impartially and to maintain the interests of each related party in legal acts. The notary also must record every matter agreed upon in the contract renegotiation process from the parties. In this case, the recording includes a clause before the renegotiation is formed until the time the consensus occurs after the contract renegotiation is carried out. As a public official, a notary has the responsibility to provide legal briefings and input so that each party can avoid disputes in the future. This is also mandated by Article 15 paragraph (2) letter e of the Notary Position Law, which reads that notaries are authorized to provide legal counselling about the making of deeds.

Conclusion

The position held by the Notary is a position of trust, where the client is willing to entrust something to the notary, and the Notary as the party to whom the trust is given has an obligation because of his position to keep all the facts given to him secret by not informing other parties. In his responsibility as a public official, a notary is obliged to direct each party involved in the contract renegotiation process so that each party does not fall into unlawful acts and/or default because the notary is also given authority in terms of legal advice and legal counselling for each party to the dispute.

Bibliography

- Al Kautsar, Thoriq, & Apriani, Rani. (2022). Wanprestasi Debitur dalam Perjanjian Kredit Usaha Mikro Kecil dan Menengah (UMKM). *Jurnal Pendidikan Dan Konseling (JPDK)*, 4(5), 7936–7949.
- Haryana, Haryana. (2016). Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara). *Jurnal Komunikasi Hukum (JKH)*, 2(2).
- Haryanto, Agus Dwi. (2023). Prinsip Kehati-hatian Notaris Dalam Membuat Akta Kuasa Menjual. *JURNAL BEVINDING*, 1(01), 102–109.
- Kosasih, Johannes Ibrahim, & Haykal, Hassanain. (2021). *Kasus hukum notaris di bidang kredit perbankan*. Bumi Aksara.
- Lestari, Tri Wahyu Surya, & Santoso, Lukman. (2018). Komparasi Syarat Keabsahan “Sebab Yang Halal” Dalam Perjanjian Konvensional Dan Perjanjian Syariah. *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 8(2), 281–298.
- Ngaini, Fitria Nur. (2024). *Dampak Renegosiasi Kontrak Karya PT. Freeport Indonesia dengan Pemerintah Republik Indonesia Terhadap Nasib Bangsa Indonesia Kedepan*. Universitas Islam Indonesia.
- Nurlaela, Ela. (2020). Status Akta Perbankan Syariah Yang Dibuat Oleh Notaris Dihubungkan Dengan Kewenangan Yang Diatur Oleh Undang-Undang No. 2 Tahun 2014 Sebagai Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris. *Aktualita (Jurnal Hukum)*, 3(1), 258–267.
- Purnayasa, Agus Toni. (2018). Akibat Hukum Terdegradasinya Akta Notaris yang Tidak Memenuhi Syarat Pembuatan Akta Autentik. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 3(3), 395–409.
- Puspadewi, Anak Agung Ayu Intan. (2023). PERAN NOTARIS DALAM RENEGOSIASI KONTRAK BISNIS. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 12(2), 189–197.
- Rachma, Zhanatrya Aulia. (2023). *Pelaksanaan Pasal 37 Undang-undang Jabatan Notaris Nomor 2 Tahun 2014 Terkait Kewajiban Notaris memberikan Jasa Hukum Bidang Kenotariatan Secara Cuma-cuma di Kabupaten Ponorogo*. Universitas Islam Indonesia.
- Sari, Novi Ratna. (2017). Komparasi Syarat Sah Nya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam. *Jurnal Repertorium*, 4(2), 8.