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## THE ROLE AND RESPONSIBILITY OF NOTARIES IN IMPROVING THE VALIDITY OF DEEDS AND LEGALIZATION

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### ABSTRACT

**Keywords:** accountability; notary; legalization.

The notary has permission to legalize private deeds requested by the party. However, private deeds often contain elements of unlawful acts. This research aims to describe the responsibilities of notaries towards their profession as public officials who make authentic deeds, and to describe the responsibilities of notaries regarding private agreements that contain elements of unlawful acts that have been legalized. The method used in this article is normative juridical, namely the study of secondary data using a statutory approach and a conceptual approach that has analytical descriptive research specifications. The results of the research in this article are: firstly, the responsibility of a notary towards his profession as an official who makes authentic deeds is only limited to the formal form of authentic deeds, not to the contents of the deed, every action carried out by a notary can be held accountable if there is a violation committed and this action can cause losses. for the parties. Second, the notary's responsibility for private agreements that contain elements of unlawful acts that have been legalized, namely that the notary does not dispute the contents of the private deed even though it contains an unlawful act clause.



### Introduction

The services of a notary are needed in people's lives, one of which is to express their will with authentic evidence. Based on Article 1 point 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN), Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other laws. Authentic deeds can be used as evidence in civil and criminal trials. According to Article 1870 of the Civil Code, a notarial deed is an authentic deed is written evidence that has perfect evidentiary power. Meanwhile, according to Article 184 of Law No. 8 of 1981 concerning the Code of Criminal Procedure, valid evidence is: (Code of Criminal Procedure, 1981) a. Witness statements; b. Expert information; c. Letters; d. Instructions; e. Defendant's statement. The authentic deed made by the notary is included in the evidence of instructions. The definition of the deed itself based on Article 165 of the Staatsblad of 1941 Number 44 (HIR), a deed is a letter done so by or before an authorized employee to make it sufficient evidence for both parties and their heirs or relating to the other party as a legal relationship, about everything referred to in the letter as a notice of direct connection with the subject of the deed (Tampubolon & Djajaputra, 2018) (Nurani, 2021). Meanwhile, based on Article 1868 of the Civil Code, an authentic deed is a deed

made in the form prescribed by law, made by or before the authorized public employees to be placed where the deed was made (Prawesthi, 2023). According to Herlin Budiono, Article 1868 of the Civil Code does not explain who is meant by an employee / general official and how the form of an authentic deed is, but Law Number 30 of 2004 concerning Notary Position appoints notaries as general officials and provides the basis and procedures for making authentic deeds (Nurkharisma, Ispriyarso, & Cahyaningtyas, 2020).

In addition to authentic deeds, there are other existing deeds, namely deeds under hand which are affirmed in Article 1874 of the Civil Code which states that writings under the hands are considered deeds signed under the hands, letters, registers, household affairs papers, and other writings made without the intermediary of a public employee. This shows that the deed under hand is basically a deed made by the parties by making an agreement without involving a general employee, one of which is a notary. According to Yahya Harahap, the power of proving the deed under the hand does not have the power of external proof as an authentic deed that cannot be refuted by the judge, thus it must be the opposing party who submits proof of the falsity of the deed, here the proof of the deed under this hand has a very weak legal force (Saepullah, 2021). According to Soepomo as stated by Yahya Harahap when viewed in terms of proof, in order for a writing to have value as a deed under the hand, several basic requirements are needed, including: first, the letter or writing is signed, the second content explained in it concerns legal acts (*Rechtshandeling*) or legal relations (*Rechtsbetrekking*) and the third is deliberately made to be used as evidence of legal acts made in it (Evi, 2021). The power of proof is only between the parties if the parties do not deny and acknowledge the existence of the agreement (acknowledging its signature in the agreement made). Therefore, either party can deny the correctness of the signatures contained in the agreement. The above can be concluded that if there is a legal problem, then the deed under this hand has very weak evidence. In line with R. Subekti who states that evidence is to convince the judge of the truth of the propositions or propositions stated in a dispute (Pasiwi, 2021). Therefore, to strengthen the deed under hand, legalization of the deed under the hand can be carried out by an authorized official, namely a notary. According to Article 56 of the UUJN, letters under the hands that are authorized or legalized must be stamped/stamped as well as the *paraf* and signature of a notary (Law Number 30 of 2004 concerning Notary Positions, 2004). The authority of the notary to certify the signature and determine the certainty of the date of the letter under the hand by registering in a special book (legalization) as stipulated in Article 15 paragraph (2) letter a of the UUJN. The parties in this case only sign before a notary where the notary does not ascertain the contents of a deed whether the content is an unlawful act or not, even though the parties sign before a notary, but the deed made is a deed under hand, not a notary deed (Sajadi & Saptanti, 2015).

### **Research Methods**

The research method used in this article is normative juridical, namely the study of secondary data such as regulations, rulings, agreements, or other legal documents, as well

as research results (Hamzah, Kahfi, & Hasyim, 2022). In this article will be explained using a statutory approach (statute approach) and a conceptual approach (conceptual approach). The specification of research in this article is descriptive-analytical, that is, the process of solving problems investigated by describing or describing the state of the subject or object of research (Probosiwi, 2021). Normative legal research always focuses on secondary data sources. Secondary data in research can be divided into primary legal material, secondary legal material and tertiary legal material (Dinaryanti, 2013). Based on the scope, objectives and approach in this study, the data collection technique used is a literature study from secondary data. Data analysis is carried out normatively-qualitatively. Normative studies in the form of analysis of notary accountability for legalized underhand agreements that contain unlawful acts.

## **Results and Discussion**

### **1. Notary's Responsibility to His Profession as a General Officer of Authentic Deed Maker**

According to Article 1 point 1 of the UUJN, a Notary Public is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or under other laws. The notary position was born because the community needed it, not a position that was created and then socialized to the wider community. As a general official who is entrusted with carrying out some of the duties of the state, notaries cannot justify all means to achieve their professionalism. Notary is a general official as stated in Article 1 point 1 of the UUJN, thus as a general official a notary is the only official who has the authority to publish authentic deeds of deeds, agreements, and determinations required by a general regulation or by those interested in being desired to be stated in an authentic deed, all as long as the making of the deed by general regulations is not also affirmed or excluded to other officials or someone else. Other officials as referred to in Article 1 point 1 of Law No. 2 of 2014 are: (Untung, 2002) a. Consul (Based on Conculair Wet) b. Regional Head Regent or Regional Secretary appointed by the Minister of Justice c. Notary substitute d. *Jurus Sita* at the District Court e. Civil Registry Officer According to Soegondo Notodisoerjo to make an authentic deed, a person must have a position as a general official, in Indonesia a lawyer even though he is an expert in the field of law, does not have the authority to make authentic deeds, because lawyers do not have the position of general officials. On the other hand, a Civil Registry Officer (*Ambtenaar Van de Burgerlijke*) even though he is not a legal expert he has the right to make authentic certificates that are used for certain things, for example to make birth certificates, death certificates, marriage certificates, this is because civil registry employees are designated as general officials and are given the authority to make these certificates (Soedjendro, 2001). Notary authority is regulated in Article 15 paragraphs 1, 2, and 3 of UUJN, which states as follows: Notary is authorized to make authentic deeds regarding all deeds, agreements and determinations required by laws and regulations, and / or agreed by those interested to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keep the deed provide grosse, copies of deed quotations, All of this so long as

the deed is made neither assigned nor exempted to any other officer or other person prescribed by law. (1) In addition to the authority referred to in paragraph 1, the notary is also authorized to:

1. Certify the signature and establish the certainty of the date of the letter under the hand by registering in a special book
2. Book letters under hand by registering in a special book\
3. Make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter concerned
4. Attestate the photocopy match with the original letter
5. Provide legal counseling in connection with the preparation of deeds
6. Make a deed relating to land, or
7. Making a deed of auction minutes

(2) Every authority as referred to in paragraph (1) and paragraph (2), the notary has other authorities regulated in laws and regulations. The responsibility carried by notaries adheres to the principle of fault of liability. In making an authentic deed, the notary must be responsible if for the deed made there is an error or violation occurs from the facing party, then as long as the notary exercises its authority in accordance with the regulations, the notary concerned cannot be held accountable, because in this case the notary only records what is submitted by the parties to be poured into the deed, false information submitted by the parties is the responsibility of the parties (Afifah, 2017). This is also in accordance with the theory of legal responsibility put forward by Hans Kelsen which states that a person is legally responsible for certain actions or that he bears legal responsibility (Herman, 2017). Thus, all legal actions committed by notaries in this case make authentic deeds, then of course he is responsible if there is an error as long as the notary's actions are in accordance with laws and regulations. If he is found guilty, it is only natural that he will be sanctioned as a consequence of this responsibility. However, basically in this case the notary has no responsibility for the contents of the deed made before him, because the content of the deed is the will and is an agreement desired by the parties. The notary only pours the agreement into the form of an authentic deed, thus the notary is only responsible for the formal form of the authentic deed as stipulated in the Law. Notaries only have a role to record or pour a legal act carried out by the parties facing the deed. Notaries are only responsible for constituting what happened, what they experienced, and what the parties saw who faced and adjusted the formal requirements for making an authentic deed were then poured into the notarial deed. In this case, the notary is not obliged to investigate the truth about the material content of the authentic deed, thus indirectly requiring the notary to be neutral and impartial and provide legal advice for clients who ask the notary concerned for legal guidance.

Thus, it can be concluded, that except for the contents of the deed, every act committed by a notary can be held accountable if there is a violation committed and the act can cause losses to the parties. The notary must account for the material correctness of the deed if the legal advice given turns out to be wrong or erroneous in the future.

Notaries who commit mistakes, whether intentional or not, that commit acts that violate the law and cause others to suffer losses, the notary can be subject to sanctions as stipulated in Article 84 of the UUJN which states, which can be a reason for the party who suffered losses to claim reimbursement of costs, compensation and interest to the notary. The compensation in question is regulated in Article 1365 of the Civil Code which states, every unlawful act that brings harm to others, requires the person who by mistake publishes this loss, to compensate for the loss. Thus, from the sound of the Article to be subject to compensation to notaries, unlawful acts must be fulfilled, there must be an error, there must be losses caused, and there is a relationship between acts and losses.

## **2. The Role and Responsibility of Notaries in Increasing the Validity of Deeds and Legalization**

Accountability in the Big Dictionary Indonesian means responsible actions (things and so on); something accounted for. This responsibility is also inherent in the Notary profession as a general official, both civil and criminal law liability. Sofian quoted Hart and Honore stating that there are three important elements related to liability in law, namely the definition of liability according to law, the legal basis for attribution of liability, and legal cases that are the basis for differences in liability. Notary liability has been regulated in Article 65 of the UUJN, which states that: "Notaries, Substitute Notaries, Special Substitute Notaries, and Notary Temporary Officers are responsible for every deed they make even though the Notary Protocol has been handed over or transferred to the depository of the Notary Protocol." According to Abdul Ghofur as quoted by Herianto Sinaga, distinguishing four points related to notaries as general officials have responsibility for the material truth of the deeds they make, namely:

1. Notary liability in civil terms for material truth to the deed made by him
2. Notary notary's criminal responsibility for the material truth in the deed he made
3. Notary's responsibility based on the regulation of the notary office (UUJN) for material truth in the deed he made
4. The notary's responsibility in carrying out the duties of his office is based on the notary's code of ethics (Sinaga, 2015).

One of the notary's responsibilities is for agreements under hand that contain elements of unlawful acts that have been legalized. Based on the Civil Code Article 1313, it contains the definition of agreement, which is an act by which one or more people bind themselves to one or more other people, an alliance is established because of an agreement (Prastomo & Khisni, 2017). Unlawful acts are acts that cause losses, and normatively these acts are subject to the provisions of Article 1365 of the Civil Code. Here Article 1365 of the Civil Code adheres to liability in the form of liability based fault. This is seen in the provisions of the Article which requires a mistake on the part of the perpetrator to arrive at a decision whether someone's actions are unlawful. In addition, the element of guilt must be proven by the party who suffered the loss as stipulated in Article 1865 of the Civil Code and 163 HIR.

Regarding legalization by a notary, it can be related to the procedure for legalization that meets the requirements in accordance with Article 1874 a of the Civil Code which

contains: "If the interested party wishes, apart from the matters referred to in the second paragraph of the previous article, in writings under the signed hand, a statement may also be given from a Notary Public or another official appointed by law, which certifies that the signatory is known to him or has been introduced to him, that the contents of the deed have been explained to the signatory, and that thereafter the signing is made in the presence of the official. In this case, the provisions of the third and fourth paragraphs and the previous article apply."

This shows that in accordance with Article 1874 a of the Civil Code and the description in the previous chapter, basically in this case the notary has no responsibility for the contents of the deed made before him, because the content of the deed is the will and is an agreement desired by the parties. Whether a deed is unlawful or not, the notary is not responsible for it. The notary's responsibility is only limited to providing legal certainty regarding the date, identity, and signature of the parties to the agreement, meaning that there is certainty of legal consequences under hand stating that the signature is indeed true all parties are present and know the contents of the agreement because it has been read by a notary, no other party because everything is done in front of the notary. Thus there is no possibility of denial in the future (Puspa & Winarno, 2016).

### **Conclusion**

Based on the results of research and analysis in this article, it can be concluded, First, the notary's responsibility for his profession as a general official of authentic deed making includes all legal acts carried out by notaries in this case making authentic deeds as long as the notary's actions are in accordance with laws and regulations, thus Notaries are only responsible for the formal form of authentic deeds as stipulated in Law. The notary here only pours the agreement into an authentic deed. Second, the notary's responsibility for the agreement under the hand that contains elements of unlawful acts that have been legalized is not responsible for the contents of the deed made before him. This is because the content of the deed is the will and is an agreement desired by the parties. Whether a deed is unlawful or not, the notary is not responsible for it. The notary's responsibility is only limited to providing legal certainty regarding the date, identity, and signature of the parties to the agreement, because in the legalization process the notary has read the contents of the agreement that has been agreed by the parties.

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