

Legal Responsibility Of Notaries In Making Authentic Deeds Based On The Civil Code

Brian Werik¹⁾, Sriono²⁾, Nimrot Siahaan³⁾

^{1,2,3)}Faculty of Law, Labuhan Batu University

*Corresponding Author

Email: brianwerik993@gmail.com

Abstract

A notary is a public official who is authorized to make authentic deeds in accordance with the provisions of the Notary Law (UUJN). Authentic deeds have perfect evidentiary power as regulated in the Civil Code (KUHPerdara). This study aims to analyze the legal responsibility of notaries in making authentic deeds based on the Civil Code. The research method used is the normative legal method with a statutory approach and case studies. The results of the study indicate that the responsibilities of notaries include civil, criminal, administrative, and professional ethics aspects. Notaries must carry out their duties with full responsibility in order to provide legal certainty for the community.

Keywords: Notary, Authentic Deed, Legal Responsibility, Civil Code;

INTRODUCTION

Notaries have an important role in making authentic deeds, (Consoleo et al., 2023) which are strong evidence in legal transactions. Based on Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law by or before an authorized public official. With the legal power it has, a notary must be responsible for every deed it makes. Therefore, it is important to understand the legal aspects that regulate the responsibilities of a notary in making authentic deeds. (Sihaan & Hasanah, 2023)

As a public official, a notary has the authority to make authentic deeds that have binding and perfect legal force before the law. However, in practice, there are various challenges that can be faced by notaries, such as potential errors in making deeds, forgery of documents, (Darazati et al., 2020) to violations of the professional code of ethics. This has legal consequences for notaries who are negligent in carrying out their duties.

This study aims to examine the legal responsibility of notaries in making authentic deeds based on the Civil Code. By understanding the legal aspects that regulate the responsibilities of notaries, it is hoped that it can provide a better understanding of the role and obligations of notaries in providing legal certainty to the community.

(Imania et al., 2020) Public trust in notaries is highly dependent on professionalism and integrity in carrying out their duties. Therefore, it is important for notaries to always pay attention to applicable legal regulations and uphold the professional code of ethics. Carelessness or violations committed by notaries can not only have an impact on individuals or legal entities concerned but can also disrupt legal stability in general.

In the context of globalization and technological developments, digitalization of documents and electronic transactions also poses a new challenge for notaries. (Saida Flora, 2012) Along with the development of the times, regulations related to the role and responsibilities of notaries in digital transactions are becoming increasingly important to note. Thus, understanding the legal responsibilities of notaries is not only limited to conventional aspects, but must also include modern legal developments.

In addition, (Hukum et al., 2023) rapid economic development also has an impact on the increasing need for notary services. Business transactions, inheritance agreements, property sales and purchases, and various other legal contracts are increasingly complex and require strong legal

protection. Notaries must be able to understand various aspects of the developing law and provide professional and accurate services in order to prevent potential legal disputes in the future.

Not only in the civil realm, the role of notaries is also increasingly needed in aspects of criminal law and state administration. Mistakes in making deeds can result in criminal sanctions for notaries if there are elements of forgery or abuse of authority. In addition, (Irham, 2021) administrative violations can also result in various sanctions, ranging from warnings to revocation of a notary's practice license.

(Sirait & Djaja, 2023) The importance of supervision of notarial practices is also one aspect that must be considered in the legal system in Indonesia. The Notary Supervisory Board plays a role in ensuring that each notary carries out their duties in accordance with applicable legal provisions. A strict supervisory mechanism is needed to avoid deviant practices and maintain the quality of notarial services for the community.

By understanding the various challenges and responsibilities inherent in the notary profession, it is hoped that this study can provide a more comprehensive insight into the role of notaries in the legal system in Indonesia. This study is also expected to be a reference for academics, legal practitioners, and the wider community in understanding the importance of the existence of notaries in ensuring legal certainty and protection in every transaction carried out. Notaries have an important role in making authentic deeds, which are strong evidence in legal transactions. Based on Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law by or before an authorized public official. (Arsy et al., 2021) With the legal power they have, notaries must be responsible for every deed they make. Therefore, it is important to understand the legal aspects that regulate the responsibilities of notaries in making authentic deeds.

As a public official, a notary has the authority to make authentic deeds that have binding legal force and are perfect before the law. However, in practice, there are various challenges that can be faced by notaries, such as potential errors in making deeds, forgery of documents, and violations of the professional code of ethics. This has legal consequences for notaries who are negligent in carrying out their duties.

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RESEARCH METHODS

This study uses a normative legal method, namely legal research conducted by examining applicable laws and regulations, legal doctrines, and relevant court decisions. The legislative approach is used to analyze regulations related to the responsibilities of notaries in the Civil Code and UUJN.

RESULT AND DISCUSSION

In this study, it was found that the legal responsibility of a notary in making an authentic deed has various dimensions that include civil, criminal, administrative, and professional ethics aspects. The following is a further discussion of each aspect of responsibility.

1. Civil Liability

Notaries can be held civilly liable if there is an error or negligence in making an authentic deed that causes losses to the related parties. The Civil Code stipulates that a person who causes losses due to his actions can be held accountable to replace the losses. If there is a legal defect in the deed made by a notary, then the injured party can file a civil lawsuit based on Article 1365 of the Civil Code concerning unlawful acts. Notaries who are proven to be negligent can be asked to replace the losses or even face a lawsuit to cancel the deed.

2. Criminal Responsibility

Notaries can be subject to criminal sanctions if proven to have committed a crime such as forgery of documents or providing false information in an authentic deed. Article 263 of the Criminal Code regulates the threat of criminal penalties for parties who forge documents, including notaries who intentionally make deeds that do not correspond to reality. In addition, Article 266 of the Criminal Code also provides sanctions for parties who intentionally include false information in an authentic deed that can mislead other parties or harm the legal interests of others. Cases involving notaries in this crime are generally related to abuse of authority in making documents or deeds related to business agreements or land rights.

3. Administrative Responsibilities

Violation of the provisions in the UUJN can result in administrative sanctions for notaries, such as reprimands, suspensions, or even revocation of office by the Notary Supervisory Board. These administrative sanctions aim to ensure that notaries carry out their duties in accordance with applicable regulations and do not abuse their authority. Some examples of administrative violations that can be subject to sanctions include not fulfilling the provisions in

making a deed, not reading the deed in front of the parties, and not keeping the minutes of the deed in accordance with the provisions.

4. Responsibility for Professional Ethics

Notaries are required to comply with the code of professional ethics that regulates the principles of integrity, independence, and legal compliance in carrying out their duties. Violation of the code of ethics can result in sanctions from the notary professional organization. For example, in cases where a notary accepts gratuities or acts in an independent manner in making a deed, the notary can be given a warning or a more severe sanction in the form of revocation of the practice license. Organizations such as the Indonesian Notary Association (INI) have an important role in enforcing professional ethical standards for notaries.

5. Implications and Challenges in Notary Practice

In addition to the legal responsibility aspects above, there are various challenges in notary practice that need to be considered. One of them is the increasing cases of document forgery and abuse of authority that can harm related parties. In addition, technological developments also bring new challenges for notaries in implementing digitalization of deeds and electronic signatures. Therefore, regulations related to notaries need to be continuously updated in order to keep up with the times and the needs of society.

Overall, the legal responsibility of a notary in making authentic deeds reflects the importance of professionalism and compliance with the law in order to provide legal certainty for the community. With stricter supervision and high awareness from notaries, it is hoped that notarial practices in Indonesia can run more transparently and accountably.

According to Hans Kelsen, law is a system of norms that regulate human behavior, including the obligations and responsibilities of individuals in society. In the context of notaries, legal responsibility can be categorized into three main aspects: civil, criminal, and administrative responsibility. This theory is relevant in understanding the obligations of notaries in making authentic deeds and the legal consequences that can arise from violations.

Max Weber put forward the concept of legal-rational authority, where a person has authority based on applicable legal provisions. Notaries as public officials have the authority granted by the UUN and the Civil Code to make authentic deeds. This theory explains that the authority of a notary must be used in accordance with applicable legal regulations, and any abuse of authority can result in legal sanctions. According to John Rawls, professional ethics relate to the principles of justice and integrity in carrying out professional duties. In the context of notaries, the notary's code of ethics emphasizes the importance of professionalism, independence, and honesty in carrying out their duties. Notaries who violate the code of ethics can be subject to sanctions by professional organizations, such as the Indonesian Notary Association (INI).

According to the theory put forward by Van Dunne and Utrecht, an authentic deed has perfect evidentiary force that binds the parties, as regulated in Article 1868 of the Civil Code. Therefore, an authentic deed made by a notary must comply with formal and material requirements in order to have valid legal force. If an error occurs in making the deed, it can give rise to legal liability for the notary. Based on the theory of civil liability, a person who causes loss to another party due to error or negligence must compensate for the loss. Article 1365 of the Civil Code regulates unlawful acts, which can be used as a basis for a lawsuit against a notary if the deed he made is detrimental to another party.

The theories above support the results and discussion in this journal by explaining the legal basis and principles underlying the notary's responsibility in making authentic deeds.

CONCLUSION

The legal responsibility of a notary in making authentic deeds based on the Civil Code includes civil, criminal, administrative, and professional ethics responsibilities. Notaries must carry out their duties professionally and in accordance with legal provisions in order to provide legal certainty for the community. To increase accountability, supervision of notaries needs to be strengthened to prevent abuse of authority

REFERENCES

- Amalia, R., Musakkir, M., & Muchtar, S. (2021). Pertanggungjawaban Notaris terhadap Isi Akta Autentik yang Tidak Sesuai dengan Fakta. *Al-Ishlah: Jurnal Ilmiah Hukum*, 24(1), 188–206. <https://doi.org/10.56087/aijih.v24i1.77>
- Arsy, E. A., Widhiyanti, H. N., & Ruslijanto, P. A. (2021). Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris. *Jurnal Bina Mulia Hukum*, 6(1), 130–140. <https://doi.org/10.23920/jbmh.v6i1.324>
- Consoleo, A. S., Sulasno, S., & Rokilah, R. (2023). Tanggung Jawab Notaris Terhadap Keabsahan Identitas Penghadap Dalam Pembuatan Akta Pengakuan Hutang Dan Kuasa Jual. *Jurnal Hak*, 1(1), 97–106. <https://ejurnal.lppmunsera.org/index.php/hak/article/view/7443>
- Darazati, S., Tista, A., & Rahman, Y. S. (2020). *DALAM PEMBUATAN AKTA YANG DIAJUKAN OLEH PARA PIHAK (STUDI KASUS PUTUSAN NOMOR. 782*, 144–160.
- Endah Pertiwi. (2019). Tanggung Jawab Notaris Akibat Pembuatan Akta Nominee Yang Mengandung Perbuatan Melawan Hukum Oleh Para Pihak. *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 1(1), 41–55. <https://doi.org/10.52005/rechten.v1i1.5>
- Hukum, A., Pertanggungjawaban, D. A. N., Akta, T., Cacat, Y., Agustini, W., & Djaja, B. (2023). “ akibat hukum dan pertanggungjawaban notaris terhadap akta yang cacat hukum .”
- Imania, D., Ngadino, N., & Hafidh Prasetyo, M. (2020). Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya. *Notarius*, 13(1), 250–265. <https://doi.org/10.14710/nts.v13i1.30394>
- Irham, R. D. A. R. R. (2021). Tanggung Jawab Notaris Terhadap Waarmerking Akta Dibawah Tangan Yang Perbuatannya Dibantu Oleh Notaris. *Jurnal Education and Development*, 9(1), 155.
- Saida Flora, H. (2012). Tanggung Jawab Notaris Pengganti Dalam Pembuatan Akta. *Kanun Jurnal Ilmu Hukum*, XIX(57), 179–199.
- Sihaan, A. Y., & Hasanah, A. N. (2023). Peran Notaris Sebagai Pembuat Akta Otentik dalam Proses Pembuktian di Pengadilan. *Al-Usrah : Jurnal Al Ahwal As Syakhsyah*, 11(1), 23–37. <https://doi.org/10.30821/al-usrah.v11i1.16650>
- Sirait, G. N., & Djaja, B. (2023). Pertanggungjawaban Akta Notaris Sebagai Akta Autentik Sesuai Dengan Undang-Undang Jabatan Notaris. *Unes Law Review*, 5(4), 3363–3378.