

## Notary's responsibility for making authentic deeds that are unlawful

Rizkia<sup>1</sup>, Ilyas<sup>2</sup>, Siti Rahma<sup>2</sup>

<sup>1</sup> Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

<sup>2</sup> Lecturers, Faculty of Law, University Syiah Kuala, Banda Aceh, Indonesia

### Abstract

A notary is a public official who is authorized by law to make authentic deeds. Notaries have guidelines or guidelines for carrying out their positions which are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. The law has given the notary the authority to write down all deeds, agreements and stipulations desired by parties who deliberately come before a notary who want their information to be set forth in an authentic deed. The role of a notary is very important in providing legal certainty regarding legal actions that the public wishes to carry out. However, notaries also have the potential to carry out their duties and authority to commit unlawful acts for personal gain. One example of an unlawful act committed by a notary in carrying out his duties and authority is contained in decision Number 1/Pdt.G/2020/PN. BNA. In this case, one of the notaries made a deed of the GMS (General Meeting of Shareholders) which in reality was not attended by all the directors or there was not enough quorum.

The aim of this research is to examine and analyze the form of notary responsibility for making deeds that are against the law. This research also aims to explain the factors that cause notaries to make deeds that are against the law and the efforts made by the Notary Honorary Council to deal with unlawful acts committed by notaries.

The research method used is empirical juridical research. Empirical juridical research is field research that examines applicable legal provisions and what happens in reality in society.

Based on the research results, notaries can be held civilly or criminally liable if they are proven to have committed unlawful acts. The factors that cause a notary to make a deed against the law are unintentional factors or not applying the principle of caution. This factor often occurs because the person present provides information that does not match the facts or circumstances in the field. The role of the notary's honorary council is to give permission to law enforcement officials to examine a notary.

From the research results, it is recommended that notaries as public officials provide legal certainty to the public to set a good example by not committing acts against the law. Thus, a notary should not neglect his integrity and professionalism under any circumstances. The Notary Honorary Council is very important to form notaries with integrity and professionalism so that they can provide protection to the public with their duties and authority in making authentic deeds.

**Keywords:** Notary, notary responsibilities, notary honorary council

### Introduction

A notary is a public official who is authorized by law to make authentic deeds. Notaries have guidelines or guidelines for carrying out their positions which are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. In the case of legal certainty, a notarial deed can provide legal guarantees to the parties regarding an event or legal action that occurs. In this case, there is legal certainty if there is a deviation from the agreement carried out by one of the parties outside the agreement of both parties as stated in the notarial deed.

The main task of a notary in making an authentic deed, the most important thing is to be able to understand the provisions regulated by law so that the general public can understand correctly and not do things that are contrary to the law. The law has given the notary the authority to write down all deeds, agreements and stipulations desired by parties who deliberately come before a notary to ask the notary to set down their information in an authentic deed so that it has perfect evidentiary power.

The potential to commit an unlawful act basically exists in every person. However, for the notary profession, this potential depends on the professional attitude towards work and the quality of the person or the individual himself.

Notaries are also a legal profession with a very vital position and role in legal development in Indonesia. This is done because notaries are not only a profession that deals solely with technical legal issues, but also actively participate in the development of law in general, and national law in particular. Notaries must always follow developments in national law, so that in the end notaries are able to carry out their profession proportionally<sup>[1]</sup>.

Nowadays, there are many problems in signing deeds, so many of these problems also drag several notaries to court to take responsibility for the authentic deeds they make. Among the cases that have been related to the issue of authentic deeds made by notaries which were disputed in court is the case written in Decision Number 1/Pdt.G/2020/PN. BNA. In this case, one of the notaries made a deed of the GMS (General Meeting of Shareholders) which in reality was not attended by all the directors or there was not enough Quorum. The decision states that Defendant III in this case is a notary who has been legally and convincingly proven guilty of committing an unlawful act.

Even though the law regulates the rights and obligations of notaries, the reality in the field is that many cases of civil and criminal violations have emerged which have also involved notaries. Notaries whose names are dragged into cases are caused by deliberate factors and the notary's own

ignorance regarding indications of legal violations in the preparation of his deed. Recently, notary circles were shocked by cases involving one notary in Aceh Province who committed violations and acts against the law.

Apart from being subject to sanctions for violations of the provisions of Article 16 paragraph (1) letter j of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, it can be a reason for parties who suffer losses to demand reimbursement of costs, compensation, and interest to the notary. Thus, a notary must always be careful in carrying out his duties so that the deed he makes does not cause problems in the future. From the rules described above, we can understand that the notary who makes the deed can also be subject to sanctions and demands for compensation if the deed he makes is against the law.

Based on the description outlined above, the author is interested in further research regarding the form of responsibility of notaries who make deeds that are against the law. Apart from that, the author is also interested in researching the factors that cause notaries to make deeds that are against the law and the efforts made by the Notary Honorary Council to deal with unlawful acts committed by notaries.

### Research Method

This research is empirical juridical research. Empirical juridical research is field research that examines applicable legal provisions and what happens in reality in society <sup>[2]</sup>. This research uses field research methods (*field research*) through interviews with respondents and informants. The research location that will be carried out by researchers is the legal area of Banda Aceh City considering that the data to be researched is in the cities of Banda Aceh and Aceh Besar. This location was chosen because it relates to the title that the author will propose by looking at the facilities and conditions that make it possible to conduct interviews. This research uses a qualitative approach, namely an approach that uses data from information in the form of statements.

The data that has been obtained is then analyzed using a qualitative analysis approach, namely by observing the data obtained and connecting each data obtained with the legal provisions and principles related to the problem being studied. inductive logic, namely thinking from specific things to more general things, using normative tools, namely legal interpretation and construction and then analyzed using qualitative methods so that conclusions can be drawn using a deductive method which produces a general conclusion regarding the problems and objectives study.

### Results and Discussions

A notary is a public official who is authorized by law to make authentic deeds. Notaries have guidelines or guidelines for carrying out their positions which are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. In the case of legal certainty, a notarial deed can provide legal guarantees to the parties regarding an event or legal action that occurs. In this case, there is legal certainty if there is a deviation from the agreement carried out by one of the parties outside the agreement of both parties as stated in the notarial deed <sup>[3]</sup>.

The main task of a notary in making an authentic deed, the most important thing is to be able to understand the

provisions regulated by law so that the general public can understand correctly and not do things that are contrary to the law. The law has given the notary the authority to write down all deeds, agreements and stipulations desired by parties who deliberately come before a notary to ask the notary to set down their information in an authentic deed so that it has perfect evidentiary power.

The responsibilities of a Notary can be seen from the obligations and authority of a Notary as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary. Responsibility is human awareness of their intentional or unintentional behavior or actions. Responsibility also means acting as an embodiment of awareness of one's obligations. Responsibility can be defined as "acting appropriately without needing to be warned. Meanwhile, responsibility is an attitude of independence and sensitivity to other people's feelings. A person's responsibilities will be seen in the way he acts in an emergency and the way he carries out his routine work.

The potential to commit an unlawful act basically exists in every person. However, for the notary profession, this potential depends on the professional attitude towards work and the quality of the person or the individual himself. Notaries are also a legal profession with a very vital position and role in legal development in Indonesia. This is done because notaries are not only a profession that deals solely with technical legal issues, but also actively participate in the development of law in general, and national law in particular.

Notary public office *public official* Those who are authorized to make authentic deeds can be burdened with responsibility for their actions in connection with their work in making said deeds. The scope of a Notary's responsibility includes the material truth of the deed he or she makes. Regarding the responsibilities of a Notary as a public official relating to material truth, it is divided into four points, namely: <sup>[4]</sup>

1. Notary's civil responsibility for the material truth of the deed he or she makes.
2. Notary's criminal responsibility for material truth in the deed he or she makes.
3. Notary responsibilities are based on Notary office regulations (UUJN) regarding material truth.
4. The Notary's responsibilities in carrying out his/her duties are based on the Notary's code of ethics.

Responsibility is a reflection of human behavior. The appearance of human behavior is related to the control of his soul, is part of his form of intellectual or mental consideration. When a decision has been taken or rejected, it is part of the responsibility and consequence of the choice. There is no other reason why it was done or abandoned. This decision is considered to have been led by his intellectual awareness <sup>[3]</sup>. The explanation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries shows that the Notary is only responsible for the formality of an authentic deed and not for the material of the authentic deed. This requires the Notary to be neutral and impartial and provide a kind of legal advice for clients who ask for legal guidance from the Notary concerned. Therefore, the Notary can be held accountable for the material truth of a deed if the legal advice he or she gives turns out to be wrong at a later date.

If the notary has made a mistake in making the deed which causes losses, he must be held accountable. In carrying out his office, notaries often encounter civil lawsuits. If the notary is found guilty in court, he is obliged to pay compensation. The role of a notary is the various rights and obligations of a notary as a middle party in the legal relationship between 2 (two) parties bound by an agreement. As regulated in Law Number 2 of 2014 concerning Notary Positions. It is not uncommon for notaries to be sued civilly or criminally because the notary made mistakes and was negligent in carrying out his office.

Authentic deeds are the strongest evidence. Actual acts are the strongest and most substantive evidence, and they play an important role in every legal relationship in social life. In various economic and social relations of countries, regions, states and regions, in various business relations, banking, land, social activities, and others. Documentary evidence of correct behavior and increased legal certainty are required. Aligned with world needs. By defining more clearly the actual behavior of rights and obligations, legal certainty can be guaranteed and disputes can be avoided.

Illegal activities can be found both in the field of criminal law (public law) and the field of civil law (private law). This way you can find terms that violate criminal and civil law. In this case, when compared, the two legal conceptions show similarities and differences. The main similarity between these two concepts and law is that the nature of both concepts requires breaking the law. Another similarity is that both legal characteristics are illegal and in principle both protect the interests of the law.

In criminal and civil law, legal violations focus more on the differences between criminal law, which is essentially public law, and civil law, which is essentially private law. By its public nature, public interests (and perhaps private interests) are violated through criminal acts, and in violations of civil law, only private interests are violated.

According to the construction of the notary law, one of the duties of a notary is "to turn the desire/behavior of a hole opener/hole opener into a real behavior on the premise of fully complying with the legal rules currently in force. The notary's actions in making an authentic deed, the exercise of the notary's authority must pay attention to legal rules regarding procedures, which show that the position of the notary and the notary is a misunderstanding or misunderstanding of civil law evidence [5]. A notary's statement or wishes before a notary is a basic element of a notary's commitment to the wishes of the presenters or parties.

Acts of falsifying, falsifying documents, using or ordering others to use forged documents, ordering to include false information in real contracts, accepting gifts or promises to induce them to get involved or not get involved in matters related to their position, if proven guilty, will be subject to criminal sanctions.

In carrying out their duties, notaries are not immune from various mistakes for which they can be held responsible. We can see notarial errors from the contents of the deed made which gives rise to legal action. Errors in the contents of the deed can occur intentionally or unintentionally. A material error is an error in the material/content of the deed, where initially the deed was made in accordance with the law and the contents of the deed were agreed upon by the parties, but there was a default or unlawful act by one of the parties which resulted in the deed not having the power to prove an

authentic deed. and in this case the notary cannot be blamed because the notary has made the deed in accordance with the applicable laws and regulations [6].

A material error is an error in the contents of the deed due to a party smuggling in an unlawful act which results in the deed not having material evidentiary power even though outwardly and formally it is in accordance with the provisions determined by law, then a deed that has one of the elements of this error can be immediately canceled legally. From the explanation regarding material errors in making a deed, it can be concluded that the criteria for a notarial deed is an authentic deed which contains elements of unlawful acts, namely errors in including the information of the parties, defects in will or unlawful acts [7].

Another factor that causes a notary to make a deed that is against the law or does not comply with statutory regulations is that the notary does not apply the principle of prudence in carrying out his office. It is very important for notaries in carrying out their duties and positions to implement the principle of caution in the process of making authentic deeds, considering that legal problems often occur regarding authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false statements in the deeds made. Notary Public. The position of a notary in its presence is required by legal regulations with the aim of helping and serving people who need authentic written evidence regarding circumstances, events or legal acts.

### Conclusion

Notary public office *public official* The person authorized to make authentic deeds can be burdened with responsibility for the duties and authority in making authentic deeds. The scope of a notary's responsibility includes civil responsibility and criminal responsibility. Civil liability occurs if the notary is careless in making the deed, resulting in civil losses for one of the parties. Meanwhile, a notary's criminal liability occurs if the notary makes a deed that is indicated to be in bad faith so that he is suspected of committing a criminal act such as fraud or evil conspiracy. The factors that cause a notary to make a deed against the law are unintentional factors or not applying the principle of caution. This factor often occurs because the person present provides information that does not match the facts or circumstances in the field. Another factor that causes a notary to make a deed against the law is economic factors or bribery. This factor can occur if the notary is tempted by the extra money offered by the person in order to achieve his goals. In the legal system in Indonesia, the Notary Honorary Council plays a role in providing approval to law enforcement officials when examining Notaries who is suspected of committing a violation of criminal law while carrying out his office

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