



Notary's responsibilities in maintaining the interests of the parties in legal actions

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Abstract

A notary is a public official 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 No. 30 of 2004 concerning the Position of Notaries. The law has given the notary the authority and obligation to write down all deeds, agreements, and stipulations desired by parties whose information is stated in an authentic deed. One of the obligations of a notary is contained in article 16 letter a of Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a notary which mandates that the notary must act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties—related to legal actions. However, notaries also have the potential to carry out their duties and authority to commit unlawful acts for personal gain. One example of an illegal act. One example of a notary committing an unlawful act by not safeguarding the interests of the parties is the 'SR' Notary as written in the Supreme Court (Mahkamah Agung) Decision Number 1787 K/pdt/2022. The verdict stated that the Defendant had been legally and convincingly proven guilty of committing the unlawful act of "Participating in Fraud".

The aim of this research is to examine and analyze the form of a notary's legal responsibility for making deeds that do not safeguard the interests of the parties in legal actions. This research also aims to explain the factors that cause notaries to make deeds that do not protect the interests of the parties in legal actions.

The type of research used is empirical juridical research. Empirical juridical research is field research that examines applicable legal provisions and what happens in reality in society. The research approach that the author uses is a review of Legal Sociology. Sociology of Law is a legal approach that departs from a branch of empirical science and analysis to understand and study the reciprocal and reciprocal relationships between social and legal phenomena.

Based on the research results, Notaries are responsible for safeguarding the interests of the parties in carrying out legal acts as stated in the deed. The factors that cause a notary to make a deed that does not safeguard the interests of the parties in a legal action are dishonesty and not applying the principle of prudence. This factor often occurs because the person present provides information that does not match the facts or circumstances in the field.

From the research results, it is recommended that notaries always maintain honesty in carrying out their duties and authority and take full responsibility for safeguarding the interests of the parties in carrying out legal acts as stated in the deed.

Keywords: Notary, interests of the parties, unlawful actions

Introduction

A notary is a public official who is given the authority by the State to make authentic deeds, as stated in Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, hereinafter abbreviated. A notary is a public official authorized to make authentic deeds and has other authorities as intended in this Law or based on other Laws. This means that based on the law, notaries are given the authority to create absolute evidence, meaning that the contents of the contract are considered to be true ^[1].

Apart from authentic deeds made by a Notary, other deeds are known as private deeds, namely deeds that are deliberately made by the parties for proof without the assistance of a deed-making official. In other words, an underhand deed is a deed made without the mediation of a public official but rather made and signed by the party agreeing ^[2]. A notary, as someone who holds a certain position in carrying out the profession of legal services to the public, also needs to receive protection and guarantees to achieve legal certainty. Notary authority in the development process is increasing as one of society's legal needs.

The law in terms of legal certainty regarding a legal act is represented by a Notarial deed which appears and is considered to provide a guarantee or guarantee to the parties regarding an event that will occur. The role of an authentic deed, in this case, is to provide 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 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. Certainty, order, and legal protection require, among other things, that law in community life requires the existence of evidence that determines a person's rights and obligations as a legal subject in society.

Notarial misconduct allows the notary to handle legal responsibilities, whether they are civil responsibilities, administrative responsibilities, or criminal responsibilities. If the facts prove that there is incorrect information in the contract, then the contract is invalid, which means the law believes that the agreement never occurred or was automatically canceled without court proceedings. Before an agreement was reached, things had returned to normal.

There are so many problems encountered in signing deeds that it is not surprising that the problem of irresponsible notaries often drags unscrupulous notaries to court. Among the cases that have been related to the issue of authentic deeds made by notaries which were disputed in court, is the case experienced by Notary 'SR' as written in the Supreme Court (Mahkamah Agung) Decision Number 1787 K/pdt/2022. The verdict stated that the Defendant had been legally and convincingly proven guilty of committing the unlawful act of "Participating in Fraud". In this case, we can understand that the notary is unable to implement his obligations in safeguarding the interests of the parties involved in the legal action.

Based on the description outlined above, the author is interested in further research regarding the notary's obligations in safeguarding the interests of the parties in legal acts which must be fulfilled as well as the factors that cause notaries to be unable to safeguard the interests of the parties in legal acts in carrying out their office.

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 ^[2]. This research uses field research through interviews with respondents and informants ^[3]. The location of the research that will be carried out by researchers is the jurisdiction of the City of Banda Aceh considering that the data to be researched is in the City of Banda Aceh. 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.

The research approach that the author uses is a review of Legal Sociology. Sociology of Law is a legal approach based on a branch of empirical and analytical knowledge that understands and studies the reciprocal and reciprocal relationships between social phenomena in society and the law ^[4].

The data that has been obtained is then analyzed using a qualitative analysis approach. Qualitative analysis means observing the data obtained and connecting each data obtained with legal provisions and principles related to the problem being studied using inductive logic ^[5]. This means thinking from specific things to more general things, using normative tools with legal interpretation and construction, and then analyzing them using qualitative methods. So that conclusions can be drawn using a deductive method which produces a general conclusion regarding the problem and research objectives ^[6].

Results and Discussions

A notary is a public official 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 authority to a notary to set forth 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 ^[7].

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 No. 30 of 2004 concerning the Position of a notary. The law has given the notary the authority and obligation to write down all deeds, agreements, and stipulations desired by parties whose information is stated in an authentic deed. One of the obligations of a notary is contained in Article 16 letter a of Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a notary which mandates that the notary must act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties. Related to legal actions. However, notaries also have the potential to carry out their duties and authority to commit unlawful acts for personal gain.

The potential to commit an unlawful act 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 with technical legal issues alone, but also actively participate in the development of law in general, and national law in particular.

In reality, several individuals take advantage of the situation to act by falsifying, falsifying documents and using or ordering other people to use fake documents. This action can be linked to an unlawful act because it can harm one of the parties. As a notary public official, he must safeguard the interests of the parties in carrying out legal actions through deeds. This is by the Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a notary mandate in article 16 paragraph (1) letter a which mandates notaries to act by safeguarding the interests of the parties.

Apart from that, ordering to include false information in a contract is also an unlawful act and does not protect the interests of the parties to the deed. This has the potential to cause legal problems and can even be related to criminal matters. A deed made by a notary is a deed whose truth cannot be doubted, so it must have an element of perfection or must be by UUJN, thus a notary has a great moral burden and responsibility for the deed he has made. If the deed made by the notary is not by the applicable legislation, then the deed will be legally flawed and result in the deed becoming invalid.

When making a deed, the parties must first agree on the contents of the articles in the deed. Before an agreement is reached, the situation has returned to normal and it must first be proven whether there are elements of a criminal act in the behavior. Thus, the crime was committed after the suspect was tried. There are no criminal provisions in the UUJN, however, if a notary commits a criminal act, the notary can be held criminally liable ^[8].

In carrying out their duties, notaries are not immune from various mistakes for which they can be held responsible. We

can see notarial errors in the contents of the deed made which gives rise to legal action. When making a deed, a notary must explain in detail the contents of the articles to the parties involved in the legal act. Errors in the contents of the deed can occur intentionally or unintentionally. However, the obligations of a notary are strictly regulated in the Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a notary, so it is mandatory for every notary to always prioritize statutory regulations in carrying out their duties. If the notary carries out all the duties carried out by statutory regulations, there will be no errors in making the deed.

Errors in making deeds can be linked to acts that are against the law because Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a notary article 16 paragraph (1) letter mandates acting on trust and safeguarding the interests of the parties. A material error is an error in the contents of a deed due to a party or person who is smuggling an unlawful act which results in the deed not having material evidentiary power even though outwardly and formally it is by the provisions determined by law, then a deed that has one of the elements These errors can immediately be legally void ^[9].

From the explanation regarding errors in making deeds, it can be concluded that several examples of notarial deeds are authentic deeds that contain elements of unlawful acts as follows:

1. Errors in including the statements of the parties;
2. Cause of Defect of Will;
3. Unlawful Acts

Currently, authentic deeds made by notaries are often indicated as criminal acts because in the process of making them the notary does not follow the precautionary principle in the process of making the authentic deeds he makes whether they contain elements of crime or not. This causes notaries to often be involved in criminal acts or civil lawsuits carried out by their clients because the notary does not apply the principle of caution in further examining the subject and object documents brought by the parties in the process of making the deed.

Conclusion

Notaries such as *openbaar ambtenaar* public officials who have the authority to make authentic deeds can have obligations regarding the duties and authority in making authentic deeds. One of the obligations of a notary in carrying out his duties and position is to safeguard the interests of the parties in carrying out legal actions. If the notary is negligent in his obligations to safeguard the interests of the parties, the notary can be sued for not implementing statutory regulations

The factors that cause a notary to make a deed that does not safeguard the interests of the parties in a legal action are dishonesty and not applying the principle of prudence. 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

Reference

1. Soegondo Notodisoerjo, Notarial Law in Indonesia An Explanation, Jakarta, Raja Grafindo Perasada, 1999.
2. Soeroso R, Underhand Agreements Practical Guidelines for Making and Application of Law, Sinar Grafika, Jakarta, 2010.
3. Peter Mahmud Marzuki, Legal Research (revised edition), Kencana Prenada Media Grup, Jakarta, 2013.
4. Sugiono, Research methods, Bandung: Alfabeta, 2015.
5. Soerjono Soekanto, Introduction to Legal Research, Jakarta, 1986.
6. Amiruddin dan Zainal Asikin, Introduction to Legal Research Methods, Rajawali Pers Grafindo, Jakarta, 2008.
7. Soegondo Notodisoerjo R, Notary Law in Indonesia An Explanation, Raja Grafindo Persada, Jakarta, 1993.
8. Soeroso R, Underhand Agreements Practical Guidelines for Making and Application of Law, Sinar Grafika, Jakarta, 2010.
9. Yeni Widowaty, Law Enforcement in Cases of Corruption Crimes in the Implementation of Regional Elections Prosiding, Yogyakarta, 2015.