

Notary Legal Responsibility for Notarial Defect Deed in Realizing Legal Certainty

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Abstract

Notaries as public officials have the authority to make authentic deeds that function to provide legal certainty for the parties. However, in practice, deeds are still found that are notarially defective due to non-fulfillment of formal provisions as stipulated in Article 44 of the Notary Position Law, which has the potential to cause legal losses. The normative juridical research approach, with the problem of how legal accountability for notaries is related to notarial defect deeds in realizing legal certainty based on Article 44 of the Law on Notary Positions. This study aims to analyze the legal position of deeds that have a notarial defect and the legal liability of the notary to the deed in realizing legal certainty. The results of the study show that violations of the provisions of Article 44 of the Notary Position Law, such as not reading the deed in front of the parties, not fulfilling the presence of witnesses, or not signing at the same time, can cause the deed to experience a notarial defect. The legal consequence that arises is a reduction in the evidentiary power of the deed so that it can be held as a deed under hand or even null and void for the sake of the law. In addition, notaries can be held legally liable in civil cases if proven to have committed mistakes or omissions that cause losses to the parties. Therefore, compliance with the provisions of laws and regulations and the application of the principle of prudence in making deeds are important to realize legal certainty.

INTRODUCTION

Notaries as public officials have the authority to draft authentic deeds whose role is very vital in the Indonesian legal system. The role of a notary is not limited to the preparation of deeds alone, but also includes overseeing legal certainty in every legal relationship formed by the related parties. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN) has explicitly regulated the authority, duties, and responsibilities of notaries in carrying out the functions of their positions. Authentic deeds made by notaries have perfect and binding evidentiary power, so that their truth and validity are very important in ensuring legal certainty for the parties. Therefore, notaries are required to carry out their duties professionally, carefully, and carefully so as not to cause legal problems in the future (Romauli Mia Augina, 2023: Adjie, 2015).

Legal certainty is one of the main principles in the legal system. In the context of a notary deed, legal certainty is related to the guarantee that the rights and obligations of the parties can be protected and implemented in accordance with applicable regulations. Thus, notaries have a great responsibility to ensure that every deed made has complied with the

applicable legal provisions. Legal certainty is not only determined by the existence of the rule of law, but also by the compliance of the apparatus and officials who exercise authority based on these rules. Therefore, notaries as general officials have an important role in realizing legal certainty through the making of deeds in accordance with the provisions of the law (Marzuki, 2017; Sutrisno, 2019).

Article 44 of the Notary Position Law stipulates that notaries are obliged to read the deed in front of the parties in the presence of witnesses and sign at the same time. This provision is an absolute formal requirement in determining the validity of an authentic deed. Notaries in practice still often do not implement these provisions optimally. Some of the violations that often occur include not reading the deed in front of the parties, not fulfilling the presence of witnesses, and the signing process that is not carried out simultaneously. This condition shows that the formal aspect of making a deed is still often ignored even though it has an important role in determining the validity of an authentic deed. Notary deeds in practice also have the potential to experience notarial defects due to the non-fulfillment of formal and material requirements in the process of making them. Notarial defects can affect the validity of the deed and cause a decrease in the evidentiary power of the authentic deed to become a deed under hand, even under certain conditions it can result in the deed being null and void (Adjie, 2015; Subekti, 2010).

Problems regarding notarial defect deeds can also be seen in judicial practice, one of which is in the Semarang District Court Decision. The case is related to a dispute over the management of the foundation involving a notary deed as the basis for the legitimacy of the parties. The dispute ultimately led to the crime of embezzlement due to differences in the legal basis used by the parties. If examined further, the problem in the case does not only lie in the conflict between the parties, but also indicates a possible weakness in the process of making a deed by a notary. This raises suspicions that notaries have not fully carried out their obligations of prudence and verification of the data and authority of the parties, so that the deed produced has the potential to contain notarial defects.

The Law on the Notary Position has regulated various obligations of notaries in carrying out their duties, including acting honestly, thoroughly, independently, and impartially, as well as ensuring that the deed is made in accordance with applicable provisions. Violation of these obligations can have an impact on the deed's evidentiary strength. Notary legal responsibility for a notarial defect deed can include civil, administrative, or criminal liability, depending on the form of error or negligence committed, but we will discuss only from a civil perspective. This shows that the role of the notary is not only limited to making a deed, but also ensuring that the deed has legal force that can be accounted for (Gaol, 2014).

Studies that discuss notary deeds and notary responsibilities, but discussions that specifically relate notarial defects to the provisions of Article 44 of the Notary Position Law and its application in judicial practice are still limited. Therefore, this research is important to be carried out to provide a deeper understanding of these problems. Based on this description, research on the legal responsibility of notaries for notarial defect deeds in realizing legal certainty is important to be carried out, especially in relation to the fulfillment of the provisions of Article 44 of the Notary Position Law.

This reality raises the question of how legal accountability for notaries is in realizing legal certainty based on Article 44 of the Law on the Notary Position.

METHOD

This research is a normative juridical research conducted by examining and analyzing the legal norms that govern the responsibility of notaries for notarial defect deeds in realizing legal certainty. This research uses a statute approach and a conceptual approach by examining various laws and regulations, doctrines, and legal theories related to the object of research. The technique of collecting legal materials is carried out through literature studies using primary legal materials and relevant secondary legal materials. The analysis of legal materials is carried out in an analytical descriptive manner to obtain a comprehensive understanding of the notary's civil liability for notarial defect deeds in realizing legal certainty (Soekanto, 2014).

The reason for using the research approach is that it is the object of research on the Law on Notary Positions, especially Article 44 whose norm stipulates that the process of making a deed must be attended by the parties and at least one person. But in reality, the notary did not read it in front of the parties.

RESULTS AND DISCUSSION

Status and Legal Consequences of Notary Defects Based on Article 44 of the Law of Notary Office

The definition of Notary is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position, namely in article 1 Number 1, so a notary is a public official who is burdened with the authority to formulate or make an authentic deed.

Notaries exercise their authority, not only acting as the party who pours the will of the parties into a deed, but also have the responsibility to ensure that the entire process of making the deed is in accordance with the applicable legal provisions. Therefore, notaries are required to act honestly, thoroughly, independently, and impartially in carrying out their duties, in order to maintain public trust in the notary profession (Adjie, 2011).

One of the important provisions that must be considered in making a deed is in Article 44 of the Law on the Notary Position. The provision stipulates that the deed must be read by a notary in front of the parties witnessed by at least two witnesses, and signed at the same time. This provision is an absolute formal requirement, because it is directly related to the validity of an authentic deed.

The obligation to read the deed in front of the parties and present witnesses in the signing process is not only administrative, but also a form of legal protection for the parties. Through this process, the parties are given the opportunity to understand the contents of the deed thoroughly before expressing their consent, so as to minimize the potential for disputes in the future.

The fact of notary practice is that the implementation of the provisions of Article 44 of the Notary Position Law does not always run as it should. There are still conditions where the reading of the deed is carried out in a formality, the parties are not present at the same time, or the signing of the deed is done at different times. This situation shows that the fulfillment of formal requirements in the making of deeds is still a problem in practice, even though these conditions greatly determine the validity and strength of proof of an authentic deed. Thus, the authority and obligations of the notary in making the deed are an inseparable unit. If the

authority is not exercised in accordance with the applicable legal provisions, the resulting deed has the potential to experience a notarial defect that has an impact on its legal position as an authentic deed.

An authentic deed is a deed made by or in the presence of an authorized public official, in this case a notary, and has perfect evidentiary power. The position of an authentic deed is very important in the law of proof, because what is stated in it is considered true and binding on the parties as long as it cannot be proven otherwise (Notodisoerjo, 1993).

Notarial defect is a condition when a deed made by or before a notary does not meet the requirements that have been determined by laws and regulations, both related to formal and material aspects. Notarial defects can occur due to non-compliance with the procedure for making a deed or there is a non-conformity with the legal provisions that govern the making of the deed so that it affects the validity of the deed, and this can be distinguished into formal defects and material defects. Formal defects occur if the procedure for making a deed is not carried out in accordance with the provisions of laws and regulations, such as the non-fulfillment of the requirements for reading the deed, the presence of witnesses, or signing as specified in the Law on the Notary Position. Meanwhile, material defects are related to the content of the deed that contains data or information that is not in accordance with the actual situation (Adjie, 2009).

Article 1868 of the Civil Code and the Law on the Notary Position stipulates that a deed must be made in accordance with the form and procedures determined by laws and regulations in order to be able to be established as an authentic deed. The fulfillment of these formal and material requirements is the basis for determining whether or not a deed made by a notary is valid or not.

The practice of notarity still shows the possibility of notarial defects, both related to formal and material aspects. The non-fulfillment of the deed making procedure or the existence of data that is not in accordance with the actual circumstances can cause problems with the validity of the deed made by the notary. The practice of notarity still shows the possibility of notarial defects, both related to formal and material aspects. The non-fulfillment of the deed making procedure or the existence of data that is not in accordance with the actual circumstances can cause problems with the validity of the deed made by the notary.

A notarial defect not only causes problems in the process of making it, but also causes legal consequences for its position and evidentiary strength. Legal consequences are consequences that arise due to non-fulfillment of legal provisions that have been set by laws and regulations. In the context of notarity, the legal consequences are related to the change in the position of the authentic deed if there are defects in the process of making it.

According to Article 1868 of the Civil Code, an authentic deed must be made in the form prescribed by law by or in the presence of an authorized public official. If these conditions are not met, then based on Article 1869 of the Civil Code, the deed no longer has the status of an authentic deed and only has the power of proof as a deed under hand if signed by the parties. In addition, Article 41 of the Law on the Notary Position also emphasizes that violations of certain provisions in the making of deeds can result in deeds only having evidentiary force as deeds under hand.

In line with these provisions, Subekti explained that the non-fulfillment of the conditions stipulated by the law in the making of the deed can cause a decrease in the

evidentiary power of the deed. A deed that originally stood as an authentic deed can be reduced to a deed under hand, even under certain conditions it can be declared null and void. This shows that the validity of a deed is highly dependent on the fulfillment of the procedures that have been determined by the law (Subekti, 2005).

In practice, problems regarding the legal consequences of notarial defect deeds often arise in disputes submitted to the court. Deeds that do not meet the formal requirements as determined by laws and regulations are often questioned by the parties to the dispute. As a result, the deed that was originally expected to provide legal certainty became the object of the dispute because its evidentiary strength was questioned.

The decline in the position of the deed certainly has a direct impact on the interested parties. A deed that is supposed to provide legal certainty actually becomes weak and its validity in the judicial process can be debated. This condition has the potential to cause legal disputes and losses, both materially and immaterially. In addition, notarial defects also have implications for the loss of the function of the deed as perfect evidence. In this case, the deed no longer has binding evidentiary power, so it must be supported by other evidence in the evidentiary process in court. This certainly reduces the value of legal certainty that should be guaranteed by an authentic deed. Thus, it can be understood that the legal consequences of a notarial defect deed not only have an impact on the position of the deed itself, but also affect legal protection for the parties. Therefore, the fulfillment of formal and material requirements in making deeds is very important to prevent the occurrence of adverse legal consequences.

The provisions of Article 44 of the Notary Position Law are one of the formal requirements that greatly determine the validity of an authentic deed. The article stipulates that the deed must be read by a notary in front of the parties witnessed by at least two witnesses and signed at the same time. This provision is not only administrative, but also has an important function in ensuring the validity and legal certainty of the deed made.

In its implementation, these provisions are still often not implemented optimally. Some forms of violations that occurred include not reading the deed directly in front of the parties, the absence of witnesses at the same time, and the signing process that was not carried out simultaneously. This condition shows that there are still notaries who have not fully applied the principle of prudence in carrying out their duties.

If the provisions in Article 44 are not met, the resulting deed has the potential to experience notarial defects, especially formal defects. This has an impact on the decline of the deed as an authentic deed, even under certain conditions it can cause the deed to lose its authenticity and only be positioned as a deed under hand. Thus, the provisions of Article 44 have a very important role in determining whether a deed is valid or not.

From the point of view of legal certainty, the violation of the provisions of Article 44 clearly has a significant impact. According to Sutrisno, legal certainty can only be realized if legal norms are implemented consistently by every legal subject who is authorized by law. In the context of the notary position, compliance with the procedure for making deeds as stipulated in Article 44 of the Law on the Notary Position is a form of implementation of legal certainty. Therefore, any violation of these provisions has the potential to reduce public trust in authentic deeds as evidence that has perfect evidentiary power. In addition, violations of these provisions can also give rise to legal liability for the notary. In this case, non-compliance with formal procedures can be categorized as a form of negligence that has the potential to

cause losses to the parties. Therefore, the application of Article 44 is not only related to the formality aspect, but also closely related to the legal responsibility of notaries and legal protection for the community.(Sutrisno, 2019).

It can be concluded that the provisions of Article 44 of the Law on Notary Positions have a very strategic position in ensuring the validity of the deed and realizing legal certainty. Therefore, notaries must consistently comply with these provisions so that the deed made still has perfect legal force and does not cause problems in the future.

Notary Civil Liability for Notary Defective Deed in Realizing Legal Certainty

Notaries as public officials have responsibility for every deed he makes. This responsibility arises if the notary makes mistakes or negligence in carrying out his authority and obligations, thereby causing losses to the interested parties. In this case, the responsibility of a notary is not only moral, but also has legal consequences that can be held accountable.

Notaries can be accounted for in this case the context of a notarial defect deed, it can be seen from a civil law perspective, especially if the defect causes losses. Based on the provisions of Article 1365 of the Civil Code, every act that violates the law and causes harm to others requires the party concerned to provide compensation. Therefore, if the notary is proven to be negligent in fulfilling the legal provisions in making the deed so as to cause losses, then the notary can be held civilly liable. Legal certainty can only be realized if the authority granted by the law is carried out in accordance with applicable regulations. Therefore, the notary as a public official must be responsible for every legal action he takes in the process of making a deed so as not to cause losses to the pihak (Umar et al., 2023).

The imposition of this responsibility, imposing the responsibility, must be fulfilled with the elements of unlawful acts, namely the existence of acts, the existence of errors, the existence of losses, and the existence of a causal relationship between the act and the loss caused. In this case, the negligence of the notary in fulfilling the formal provisions, as stipulated in Article 44 of the Law on the Notary Position, can be categorized as an error. Meanwhile, losses experienced by the parties can be in the form of loss of the deed's evidentiary power or the emergence of legal disputes.

The causal relationship between acts and losses is also an important aspect in determining notary liability. This means that it must be proven that the losses incurred are a direct result of the negligence of the notary in making the deed. If the relationship can be proven, then the notary is obliged to provide compensation in accordance with the losses experienced by the parties. In addition, from the point of view of legal responsibility theory, any violation of legal norms will have consequences in the form of an obligation to account for these acts. In this case, the notary as a public official must be subject to the provisions of the applicable law and be responsible for every action he takes in carrying out his position. Thus, the legal liability of the notary for the notarial defect deed is a consequence of the non-fulfillment of legal obligations in making the deed. Therefore, notaries are required to always act carefully, thoroughly, and comply with all provisions of laws and regulations so as not to cause losses to the parties or legal problems in the future (Kelsen, 2006).

CONCLUSION

Based on the results of the discussion, it can be concluded that a notary deed as an authentic deed has an important role in providing legal certainty for the parties. However, this position is highly dependent on the fulfillment of formal and material requirements in the process of making it, especially as stipulated in Article 44 of the Law on Notary Positions. Violations of these provisions, such as non-reading of the deed, non-fulfillment of the presence of witnesses, and signatures that are not carried out simultaneously, can cause the occurrence of notarial defects that have an impact on decreasing the evidentiary power of the deed.

A deed that is notarially defective can lose its authenticity and turn into a deed under hand or even declared null and void. In such conditions, the notary can be held civilly liable if it is proven that his mistake or negligence in making the deed causes losses to the parties. Therefore, prudence, precision, and compliance with the provisions of laws and regulations are needed so that the deed made still has legal force and is able to provide legal certainty.

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