



Received: 27-06-2024
Accepted: 07-08-2024

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Notary's Responsibilities Regarding Deeds Read by Notary Employees in Front of an Audience

¹Hanafitty, ²Ilyas Ismail, ³Novi Sri Wahyuni

¹ Postgraduate Student of Master of Notary, Faculty of Law, Universitas Syiah Kuala, Indonesia

² Faculty of Law, Universitas Syiah Kuala, Indonesia

³ Notary in Aceh Besar Regency, Indonesia

Corresponding Author: **Hanafitty**

Abstract

A notary in carrying out his office to make an authentic deed has obligations that must be carried out. One of the obligations is to read the deed as regulated in Article 16 paragraph (1) letter (m) UUJN which states that "to read the deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making the deed of will is private, and signed at that time by the presenter, witness, and notary." The obligation to read the deed in front of the audience must be carried out by the

notary himself and is not delegated to the notary's employees. In practice, there are notaries who do not read the deed in front of the audience, but are replaced by notary employees to read the deed in front of the audience. So the purpose of this writing is to examine and analyze the notary's responsibilities regarding deeds read by notary employees in front of an audience, as well as analyzing the legal consequences of deeds read by notary employees in front of an audience.

Keywords: Responsibility, Notary, Deed not Read, Notary Employee

Introduction

The Republic of Indonesia as a legal state has guaranteed legal certainty, order and protection for every citizen. In order to guarantee legal certainty, order and protection, authentic written evidence is needed regarding acts, agreements, decisions and legal events made before or by authorized officials.¹ The official in question is a person who is given authority by the state through statutory provisions, one of which is a notary. Thus, the legal consequence for every notary in making a deed is that he is truly responsible for the deed he makes.²

A notary is a public official appointed by the government to assist the public in making agreements. However, the officials in question are not civil servants, neither Civil Servants (PNS) nor State Civil Apparatus (ASN).³ This is as regulated in Law Number 30 of 2004 which was amended by Law No. 2 of 2014 concerning the Position of Notaries (hereinafter referred to as UUJN) which states that "a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this law or under other laws."

Notaries have an important position in legal traffic, especially with regard to producing authentic written evidence. Based on Article 1868 of the Civil Code (hereinafter referred to as the KUHPdata) that "an authentic deed is a deed which, in the form determined by law, is made by or in the presence of public officials who have the authority to do so in the place where the deed was made."

The authority of a notary in making authentic deeds is regulated in Article 15 (1) UUJN that: "Notaries have the authority to make authentic deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in the deed authentic, guaranteeing the certainty of the date the deed was made,

¹ Luthfan Hadi Darus, Muhammad, *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, Yogyakarta: UII Press, 2017, hlm. 1.

² Suhaimi, Nurdin MH, Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh, *Jurnal Ius Civile*, Volume 7(2), 2023, pp. 27-45.

³ Cut Novadilla Halid, Sanusi, Novi Sri Wahyuni, Suhaimi, A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act, *International Journal of Multicultural and Multireligious Understanding*, Vol.10(1), January 2023, pp. 65-73.

storing the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law."

Making an authentic deed requires written proof,⁴ because people in general in the business world carry out one or several legal acts that require the services and role of a notary.⁵ This means that the role of a notary is to create and provide authentic documents as strong evidence so that they are expected to be able to provide legal protection to the holder, as well as to parties who have an interest in the authentic document.⁶

A notarial deed will act as an authentic deed if the deed is made in accordance with the provisions stipulated in statutory regulations. On the other hand, if a notarial deed is made contrary to statutory regulations, then the deed, from being an authentic deed, will be degraded to a private deed. According to UUJN, notaries are legal subjects who are burdened with obligations as regulated in Article 16 UUJN.⁷ One of them is the obligation to read the deed as stated in Article 16 (1) letter (m) UUJN that "read the deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making the deed The will is private, and signed at that time by the presenter, witness and notary." Based on this provision, a notary in carrying out his office is obliged to read the deed first to the parties before the deed is signed in the presence of an audience, witnesses and notary.

The obligation to read the deed by a notary is also reaffirmed in the provisions of Article 44 (1) UUJN, that: "as soon as the deed is read, the deed is signed by each presenter, witness and notary, unless there is a presenter who does not sign and states the reason. " The phrase "immediately after the deed is read" in this article refers to the notary's obligation to read the deed to the parties before the deed is signed.

The purpose of reading the deed by a notary is so that the notary has the opportunity to correct errors that were previously invisible. Reading the deed provides an opportunity for the parties to make corrections if there are errors, so that the deed contains something that the parties want. Apart from that, the presenters also have the opportunity to ask questions about things that are unclear in the contents of the deed.⁸

Reading the deed by a notary is mandatory in every authentic deed, reading the deed is part of the *verlijden* or inauguration of the deed (reading and signing). Because the deed is made by a notary, it must also be read by the notary

concerned, not by someone else such as a notary employee.⁹ If the notary delegates the reading of the deed to his employee, then the notary has violated the provisions in Article 16 (1) letter (m) UUJN and must be responsible if the reading of the deed by his employee in the presence of an audience causes losses to the parties concerned.¹⁰ If the notary himself reads the deed, the presenters on the one hand have a guarantee that they are signing what they heard previously read by the notary and on the other hand the presenters and the notary have confidence that the deed really contains what the presenters want.¹¹

There are provisions regarding exceptions to the reading of notarial deeds which are regulated in Article 16 (7) UUJN that: "exceptions to the reading of notarial deeds if the presenter wishes that the deed not be read because the presenter has read it himself, knows and understands its contents, provided that this stated in the cover of the deed and on each page the minutes of the deed are initialed by the presenter, witness and notary." As an additional regulation, the provisions of Article 16 (8) of the UUJN explain that this exception applies to the reading of the head of the deed, comparisons, brief and clear explanation of the main deed, and the conclusion of the deed.

The notary's obligation to read the deed or not read it must be stated at the end of the deed. The aim is so that the party making the deed knows whether the deed was read or not when it was made. This is also a consideration for the panel of judges who examine the deed in evidence if problems arise in the future.¹²

In carrying out his office, notaries must behave in accordance with statutory regulations, namely UUJN and the Notary Code of Ethics. In order not to violate these provisions, notaries are supervised by the Notary Supervisory Council, which is a body that has the authority and obligation to carry out guidance and supervision of notaries. This is as stipulated in Article 67 (1) UUJN that the Minister carries out supervision. Furthermore, Article 67 (2) states that the Minister who carries out supervision as intended in paragraph (1) shall form a Supervisory Council.

Ideally, the Notary Supervisory Council carries out a supervisory function over the implementation of the duties of the notary position, thereby minimizing violations committed by notaries.¹³ However, the reality is that notaries are often found who do not read deeds in front of the audience and are replaced by notary employees, so that the supervisory function of the Notary Supervisory Board is still not optimal, especially in terms of fulfilling the formal requirements for making and ratifying deeds by notaries which are sometimes neglected by Notary Public.

⁴ Pratiwi Ayuningtyas, "Sanksi Terhadap Notaris Dalam Melanggar Kode Etik", *Jurnal Ilmiah Hukum Kenotariatan*, Vol. 9, No. 2, November 2020, hlm. 95.

⁵ Pratiwi Ayuningtyas, "Sanksi Terhadap Notaris Dalam Melanggar Kode Etik", *Jurnal Ilmiah Hukum Kenotariatan*, Vol. 9, No. 2, November 2020, hlm. 95.

⁶ *Ibid*, hlm. 88.

⁷ Burhanuddin, *Tanggung Jawab Notaris Perlindungan Minuta Akta Dengan Cyber Notary*, Pasaman: CV. Azka Pustaka, 2022, hlm. 81.

⁸ Erlinda Saktiani Karwelo, "Prospek Pembacaan dan Penandatanganan Akta Notaris melalui Video Conference", *Tesis*, Malang: Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Brawijaya, 2014, hlm. 5.

⁹ Hanna Yustianna Yusuf, "Pembacaan Akta Oleh Notaris Sebagai Syarat Otentisitas Akta, *Tesis*, Magister Kenotariatan Fakultas Hukum Universitas Indonesia, 2012, hlm. 3.

¹⁰ Iqbal Putra Pratama, dkk, "Tanggung Jawab Notaris Terhadap Kewajibannya Dalam Hal Pembacaan Akta", *Jurnal Notarius*, Volume 14 Nomor 2, 2021, hlm. 814.

¹¹ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1996, hlm. 201.

¹² Kerina Maulidya Putri, "Kewajiban Notaris Melakukan Pembacaan Dan Penandatanganan Akta di Depan Semua Pihak Secara Bersama-Sama", *Jurnal*, Vol. 1 No. 2, April 2022.

¹³ Rizky Yunian, "Keabsahan Akta Notaris Yang Tidak Dibacakan Oleh Notaris di Depan Para Penghadap dan Para Saksi Saat Penandatanganan Akta", *Jurnal*, Vol. 2 No. 2 2 Agustus 2022, hlm. 290.

Cases related to violations of the provisions of Article 16 (1) letter (m) UUJN regarding deeds that were not read by a notary, but replaced by an employee, have occurred in civil cases with the qualification of Unlawful Acts which were examined and decided based on Banyuwangi District Court Decision No. 192/Pdt.G/2014/PN.Bwi.

In the main case of the decision there is the fact that a technical error occurred related to a typing error and the deed was read in front of the audience by a notary employee. Furthermore, in the verdict it was stated that Defendant I, namely a notary, and Defendant II, namely a notary employee, were proven guilty of committing an unlawful act. The defendant was sentenced to pay compensation to the plaintiff, and stated that Deed Number 31, dated 12 February 2014, concerning the Statement of Decisions of the Management of the Association of Trustees of Higher Education Institutions, the Banyuwangi Republic of Indonesia Teachers' Association, drawn up by Defendant I, had no binding legal force, and demanded Defendant I to revoke Deed Number 31, dated 12 February 2014.

Thus, based on the description of the problems and juridical facts that have been stated above, it is important to carry out research in the form of a thesis entitled "Responsibilities of Notaries for Deeds Read by Notary Employees in Front of an Audience".

Research Methods

This research uses a type of normative juridical research, namely legal research that places the law as a system of norms. The norm system in question is the principles, norms and rules of statutory regulations, court decisions, agreements and doctrine (teachings).¹⁴ Normative juridical research focuses on the analysis of legal norms which aims to explore the truth based on scientific logic based on the normative side.¹⁵ This research was carried out as an effort to trace the truth and observe the principles contained in a number of statutory regulations specifically relating to notarial law. It is hoped that this will answer problems regarding the reading of notarial deeds which are not carried out by notaries but by notary employees, in accordance with applicable laws and legal principles, positive law regarding these issues as well as a number of other supporting theories. Normative legal research is library research, namely research on secondary data. The secondary data referred to is primary legal materials, secondary legal materials and tertiary legal materials. Apart from that, interviews were also conducted with several sources, namely: to obtain information and opinions regarding the notary's responsibilities regarding the deed read by the notary's staff. Interviews were conducted by asking questions and answers directly to the resource person using a list of questions that had been prepared as an interview guide. The sources for this research are: 5 Notaries of the Municipality of Banda Aceh, the Regional Supervisory Council (MPD) of the Municipality of Banda Aceh and academics from the Faculty of Law, Syiah Kuala University. Analysis of legal materials in normative legal research is carried out qualitatively which is descriptive, comprehensive and complete so that the data produces more perfect legal research results. Through descriptive analysis, you can

describe events that are the center of attention originating from all the data that has been collected, both through library research and field research so that it can become input for research.

Results and Discussion

1. Responsibilities of a Notary Related to Obligations in Reading Deeds in Front of an Audience

The obligation to read the deed is an important part of making a notarial deed. The importance of reading a deed is because by reading the deed, the notary will know whether the deed he has made has or has not met the wishes of the person present. So that if it turns out that there are things that are not appropriate, they can be easily identified and therefore improvements can be made.¹⁶

Article 16 (1) letter 1 determines that, in carrying out his office, the notary is obliged to read the deed in front of the presenter in the presence of at least 2 (two) witnesses and signed at the same time by the presenter, witness and notary. This reading must be carried out by a notary before the deed in question is signed by the presenters, witnesses and the notary.

Based on the provisions contained in the UUJN, the notarial deed must be read by the notary to the presenters and witnesses. The reading of the deed may not be delegated to other parties, including the notary's own employees. This is because a notarial deed is a document that must fulfill formal and material requirements to be valid in the eyes of the law. Reading the deed by the notary himself can ensure that all parties involved can understand the contents and consequences of the deed so as to avoid mistakes.

UUJN does not regulate the duties of notary employees, but in general a notary employee is someone who is trusted by the notary to assist in carrying out the notary's position. The duties of notary employees include preparing the deed, such as establishing communication with the parties, tidying up the files so that they are easier to retrieve when needed, making a bundle of minutes of deeds per month, making a report or register of deeds, making a private letter register book. which has been approved,¹⁷ and so on.

The role of notary employees is needed to assist the notary in documenting documents in the office, such as storing minutes that have been bundled together with supporting documents. This must be done carefully, neatly, safely and well because this is an important part of the notary's obligation to safeguard documents and deeds of the parties made in his presence.

Notary employees are also parties who can act as instrumental witnesses or deed witnesses. In registering a deed, a notary appoints his employee as a witness when the deed is about to be signed. Witnesses who saw it directly and participated in the procedure for signing the deed as required by UUJN. Instrumental witnesses must be present when the deed is drawn up and the deed is signed.

Based on their position, notaries have the right or authority to give orders to notary employees to carry out their authority. In the case of reading deeds, there is no legal basis

¹⁴Salim HS dan Erlies Septiana Nurbani, *Op.Cit.*, hlm. 12.

¹⁵Johny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, 2005, hlm. 68.

¹⁶Ridhwan Dirham, "Permasalahan Hukum Akta Notaris Yang Tidak Dibacakan Oleh Notaris", *Tesis*, Universitas Indonesia, 2007, hlm. 46.

¹⁷Khairunnisa Noor Asufie," Urgensi Standarisasi Kualifikasi Karyawan Notaris di Indonesia", *otary Law Journal Vol 2 Issue 3 Juli 2023*, hlm. 224.

that regulates whether or not notary employees can read deeds in front of audiences. Usually the reason a notary delegates the obligation to read a deed to a notary employee is because the notary's schedule conflicts with other activities. The notary's busy schedule of meeting with clients to carry out binding or credit agreements at a bank causes time conflicts so that the notary must be able to divide tasks with his employees. However, to maintain the trust of the notary, the notary still has to read the deed himself and use time effectively and efficiently when dealing with the presenter.¹⁸

A notary who delegates the obligation to read deeds to his employees will have the impact that the deed made by the notary will not be in accordance with what is expected by the person present. This happens because the presenters do not understand the contents of the deed, which will give rise to misunderstandings and multiple interpretations regarding the contents of the deed made by the notary. As a result, in the future one of the parties to the deed may default or the deed cannot be used properly.

Notaries have a professional and ethical responsibility to ensure that the deed made is in accordance with legal provisions and the wishes of the parties. The notary must also guarantee the trust given by the parties who rely on the notary as a neutral and trustworthy party. By reading the deed directly, the notary can identify and address potential errors or irregularities in the document before the deed is signed. This can help prevent fraud and ensure document integrity.

Notary is a position given by the state who, before carrying out his duties and authority, must take an oath/promise of office before the official who appointed him. Therefore, the one who carries out the office properly is the notary himself. A notary is a person who is responsible for deeds, verifies deeds and carries out his office in accordance with the oath he has taken. Notary employees are people who are trusted by the notary to assist the notary's activities in preparing files, as witnesses in the deed who see the process of making the deed and signing the deed, not people who are sworn in to carry out their position, and not people who face the client. In practice, although the person who prepares the deed is a notary employee, the main task of making the deed, reading the deed and signing the deed is the notary. So the condition for the validity of an authentic deed is when the deed is read and signed by a notary, and if the deed is not read by the notary himself then there is the potential for the evidentiary power of the deed to be lost.¹⁹

The reading of a notarial deed carried out by a notary employee, of course violates the provisions of UUJN and the Notary Code of Ethics. Notaries as public officials who have been sworn in to carry out their obligations in carrying out their office must bear responsibility in accordance with what they do.

Thus, the reading of notarial deeds should not be delegated to notary employees to ensure that all legal and ethical procedures are fulfilled, as well as to maintain trust and legal certainty for the parties involved. However, in practice there are many cases related to violations of procedures for making notarial deeds, as can be seen in the Banyuwangi

District Court Decision Number 192/Pdt.G/2014/PN.Bwi. In this decision the problem was regarding the deed which was not read by a notary, but was replaced by a notary employee. Sitting in case 192/Pdt.G/2014/PN.Bwi, one of the points of the plaintiffs' lawsuit is that in Deed Number 31, especially regarding the change of management, it was carried out unilaterally without any handover, approval or settlement from the old management. to the new management. In this deed, the entire composition of the old management, members and supervisors was replaced with a new one, so that the actions of the defendants were considered contrary to the law.²⁰

The result of unilateral actions carried out without approval, settlement, and without handing over assets and work from the old management to the new management, is considered an unlawful act that is unfair and cannot be legally accounted for, which harms the plaintiffs both materially and morally, because some of the Association's assets are still in the names of the founders (old management). The essence of the plaintiffs' lawsuit is that Deed Number 31, dated 12 February 2014, concerning the Statement of the Management Meeting of the Association of Trustees of Higher Education Institutions, the Banyuwangi Republic of Indonesia Teachers' Association, made by Defendant I, is null and void or invalid.

Based on the results of the examination by the MPD of Notaries in Jember, in the Minutes of Examination by the Examination Board of the notary concerned, it was stated that the Deed violated the provisions of "Article 16 (1) letter (m) of Law No. 2 of 2014," BAP Number: 1 /BAP/MPDN.KAB.JEMBER/05/2014. In the main case, it was found that in making the deed there was a technical problem related to a typing error and the deed was read in front of Defendant II by a notary employee who worked for Defendant I. In the procedure for making the deed, the notary employee communicated with the parties and then made the deed technically, then the notary employee reads the deed in front of the audience, but the notary does not follow up by reading the deed until the deed is signed. This error has been acknowledged and strengthened by evidence from the results of the examination by the MPD of Notaries in Jember.

In the end, the judge decided to grant the plaintiff's lawsuit in part; states that Deed Number 31, dated 12 February 2014, concerning the Statement of Decisions of the Management of the Association of Trustees of Higher Education Institutions of the Banyuwangi Republic of Indonesia Teachers' Association made by Defendant I has no binding legal force; and ordered Defendant I to revoke Deed Number 31, dated 12 February 2014. The judge, through various legal considerations and in the trial which basically stated that Defendant I admitted all his mistakes and mistakes in making Deed Number 31 and apologized to the Plaintiffs, so the judge stated that the deed did not have binding legal force and ordered Defendant I to revoke the deed.

From the case above, it can be seen that the change of management carried out without handover, approval and settlement has violated procedures that should be carried out legally and transparently. This shows the arbitrary and

¹⁸ Hasil wawancara dengan Oti Pertiwi, S.H.,M.Kn, notaris di Kota Banda Aceh pada tanggal 15 Mei 2024 pukul 15.00 WIB.

¹⁹ Hasil wawancara Ahmad Rifqi Nurilmi, Notaris di Kota Banda Aceh, pada tanggal 27 Mei 2024 pukul 13.30 WIB.

²⁰ Direktori Putusan <https://putusan3.mahkamahagung.go.id/direktori/putusan/880b7304e2de8459a693cb2dbb474e4f.html> [diakses pada 15/10/2023].

unfair actions of the Defendants. Changes in association management should be carried out transparently, in accordance with the provisions of the Articles of Association or Bylaws, and involve all members of the association. This process includes member meetings, election of new management, making notarial deeds, registration and ratification as well as handover of positions. This must be well documented to ensure the legality and transparency of the management change process.

Technical errors in making and reading the deed, as well as the notary's absence at the time of signing, indicate unprofessionalism and negligence on the part of the notary, who should ensure that all processes are carried out according to the law. In this case, the notary's admission of error and his apology show that there was an element of error in the process of making the deed, thus supporting the judge's decision to cancel the deed.

The decision to cancel Deed Number 31 shows that all actions taken based on the deed are invalid and have no legal force. This returns the legal position of the parties to the state before the deed was made. Technical errors in making the deed and the unprofessionalism of the notary were also important factors in this decision. The admission of error by the notary strengthens the Plaintiff's argument that their rights have been violated, so the decision to cancel Deed Number 31 and order its revocation is appropriate and fair.

Another case related to a deed not being read by a notary also occurred in the case of the Medan District Court decision Number 347/PDTG/2012/PN.MDN. This case started with the Plaintiff giving the original documents for his land and house to Defendant I. On November 25 2010, Defendant I contacted the Plaintiff and said that his friend was willing to lend him the cash he needed, on condition that the Plaintiff signed a Debt and Receivable Agreement in front of a notary. Defendant I promised to redeem the land documents within two months, so the Plaintiff agreed and was taken by Defendant I's orders to the notary's office.

The plaintiff admitted that Defendants I and II explained that the document to be signed was a Debt and Receivable Agreement. In this case, according to the plaintiff, the notary was deliberately not in his office when the plaintiff signed the letter. So the plaintiff only signed the sheet in the presence of a notary employee. The employee assigned by Defendant III (notary) did not explain the contents of the document and only handed over the sheets that had been made by the notary to the Plaintiff. So the plaintiff believed in the oral explanation of Defendants I and II that the document to be signed was a Debt and Receivable Agreement even though the amount of debt taken by Defendant I was not stated and the Plaintiff did not receive cash from Defendant II.

After two months, the Defendant did not redeem the land and building documents and the promised project apparently never existed at all. In March 2011, Defendant II evicted the tenants of the Plaintiff's building based on the Deed of Relinquishment of Rights with Compensation made on 25 November 2010 and a private statement in the name of Defendant I which was made and signed by a notary. The Plaintiff assumes that the Defendant has jointly committed an unlawful act which resulted in the Plaintiff feeling disadvantaged by the Defendant.

The judge decided to reject the Plaintiff's lawsuit and sentenced the Plaintiff to pay court costs. This is because

Defendant III (notary) never made a letter or legalized the Debt and Receivable Agreement, but only legalized the statement that had been drafted by the parties and in accordance with the letter of Release of Rights and Compensation made by the notary, the disputed land has been transferred to Defendant II with compensation Rp. 25,000,000 and based on evidence of the Plaintiff's statement that the plaintiff would buy back the plot of land to which he had relinquished his rights from Defendant II by re-executing the Deed of Relinquishment of Rights with Compensation. The judge also stated that the notary was only carrying out his duties in making authentic deeds in accordance with the law.

In this case, the evidence presented by the Plaintiff was the same as the evidence presented by the Defendant, in which all of this evidence the reason for the Plaintiff's claim was considered unfounded. Because in accordance with Article 1338 of the KUHP data that all existing evidence which constitutes an agreement means it is binding on the parties (*Pacta Sunt Servanda*), then all agreements made by the Plaintiff with the defendants which have been made legally apply as law for those who make it.

In this case the judge has paid attention to all the evidence presented quite well because none of the actions carried out by the parties violate the law, even though the plaintiff in his lawsuit feels that he was deceived by the agreement that was made before a notary, but in this case it does not make sense because the plaintiff He is not illiterate, after only a few months he submitted his claim. In such a long period of time it is unreasonable that he did not know the contents of the agreement that had been made even though in his statement and confession the deed was not read by a notary.

Based on the facts presented, there is no action that violates the subjective rights of other people because based on the available evidence, Defendant II has also paid money for the Waiver of Rights and Compensation and the agreement made does not conflict with the law because there was no coercion in signing letter of release of rights and compensation.

In this court decision, the plaintiff could not prove that the deed made by the notary was defective in form, so that the losses suffered by the plaintiff were the result of the notary's negligence. Based on physical evidence of a deed made by a notary, the signatures of the presenters, witnesses and notary, both on the minutes and the copy, are truly the signatures of the parties to the Deed. Formally, the plaintiff also cannot prove that the plaintiff never appeared before the notary according to the date and day stated on the deed, because the plaintiff did appear before the notary according to the day and date stated on the deed, materially the plaintiff's claim was that the notary did not read and explain the contents of the deed, and the deed he signed was a deed of release of rights and compensation, not a deed of debts as the plaintiff intended, cannot also be proven because it is clear that the evidence of his fingerprints and signature has proven that the plaintiff knew what he was signing.

The aspect of proving the perfection of the Deed made by the Notary in the Medan District Court decision Number 347/PDTG/2012/PN.MDN cannot be proven by the plaintiff that the notarial deed is not authentic, so the notarial deed cannot be canceled because the notary only records what the parties want. facing. In this case, the plaintiff also cannot prove that the deed made by the notary is contrary to legal acts so that the notarial deed remains valid and binding on

the parties or anyone who has an interest in the deed, in accordance with the principle of legal presumption in the general explanation of the UUJN that the notarial deed is a tool. the strongest and most complete written evidence, what is stated in the notarial deed must be accepted, unless the interested party can prove otherwise satisfactorily at trial.

This case shows that the notary, as the party responsible for making authentic deeds, can only follow the instructions given by the parties as long as they do not violate applicable legal provisions. Meanwhile, the responsibility to understand and evaluate the legal consequences of the signed agreement remains with the party who signed it, namely the Plaintiff.

Plaintiffs who wish to annul the deed before the Court must be able to sufficiently prove that there was error, fraud, coercion, or other irregularity in the deed read by the notary when making or executing the deed. As well as being able to show the necessary evidence, which can be in the form of written documents, testimony from relevant witnesses, or other physical evidence that supports the claim that the deed is invalid or invalid.

A notary who is proven to have deliberately not read the deed but has delegated the obligation to read the deed to his employees, causing the parties to suffer losses because of this, the notary can be declared administratively guilty and can be subject to administrative sanctions, civil sanctions and criminal sanctions.²¹

The notary is responsible for losses experienced by the parties caused by his negligence in reading the deed as stipulated in Article 1365 of the Civil Code that "every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss." the." When the notary is unable to pay compensation for material losses experienced by the parties and there is a court decision regarding this matter, the notary can be declared bankrupt by the court. Bankruptcy is one of the reasons that can lead to the temporary dismissal of the notary from his position²² as stipulated in Article 9 (1) letter a UUJN.

As a result of this error, not only will the parties suffer losses, the notary as the official who made the deed will also experience losses due to problems with the deed he made. The losses experienced by the notary due to the notary can be reported to the authorities, in this case the MPD of Notaries, the Police, and even the Consumer Dispute Resolution Agency. This reporting depends on the form and magnitude of losses experienced by the parties due to errors and negligence made by the notary in making the deed, therefore the notary can be held responsible.

A notary who makes a deed based on orders and requests from the parties with the formal conditions determined by law in making the deed have been fulfilled by the notary, then the notary is not responsible. Accountability for one's actions is usually practical, that is, there is meaning only if one commits an act that is not provided for by law.

²¹ Arifaid, P, *Tanggung Jawab Hukum Notaris Terhadap Akta in Originali. Jurnal IUS Kajian Hukum dan Keadilan*, 2017, hlm. 516.

²² Rahman, "Limitasi Pertanggungjawaban Notaris Terhadap Akta Autentik Yang Dibuatnya", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, 2017, hlm. 8.

2. Sanctions Against Notaries Who Delegate the Obligation to Read Deeds to Notary Employees

Notaries as public officials have a big responsibility to make deeds properly and correctly as specified in the applicable laws and regulations, in order to avoid claims from the party facing them or other parties who suffer losses as a result of the deed made by the notaries. Notaries and their deeds can be interpreted as the state's efforts to create legal certainty and protection for members of society. Notaries who are proven to have committed unlawful acts that are not in accordance with applicable regulations in carrying out their office are obliged to be held accountable for these acts.

The conditions that must be fulfilled in imposing sanctions on a notary are that they must fulfill the formulation that the act is prohibited by law, that there is loss resulting from the act and that the act must be unlawful, both formally and materially. Formal means that it meets the formulation in the law, while material means that it meets the tests of the code of ethics and UUJN.

Sanctions given for violations by notaries aim to ensure that in carrying out their duties and positions, a notary is required to be responsible to himself, the party facing him, and also to God Almighty. Notaries as public officials who have the authority to make authentic deeds can be burdened with responsibility for their actions in connection with their work in making deeds.

Notaries who are proven to have violated notarial obligations and prohibitions as regulated in Article 16 UUJN and 17 UUJN, may be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions.²³ Sanctions for notaries who are negligent or make mistakes and/or violations are the responsibility of the notary who has a big role in the community in obtaining legal certainty. Legal sanctions are needed so that people can obey the law.

Legal sanctions are a means of protecting individual or corporate interests (freedom, life, property, animals, body) by threatening punishment as a sanction for any violation of the law.²⁴ Sanctions are a coercive tool, apart from punishment, they also require compliance with the provisions stipulated in regulations or agreements. Sanctions are essentially a juridical instrument that is usually given if obligations or prohibitions contained in legal provisions have been violated, and behind the doors of commands and prohibitions (geen verboden) sanctions are available to compel compliance.²⁵

The notary is obliged to be responsible if the reading of the deed by his employee in front of the audience causes losses to the parties involved. This is because the deed is the full responsibility of the notary.²⁶ The threat of civil sanctions

²³ Putri A.R, *Perlindungan Hukum Terhadap Notaris (Indikator Tugas-Tugas Jabatan Notaris yang Berimplikasi Pembuatan Pidana*, Jakarta: PT. Softmedia, 2011, hlm. 9-10.

²⁴ M.H. Tirtaamidjaya, *Pokok-Pokok Hukum Pidana*, Jakarta: Penerbit Fasco, 1995, hlm. 15

²⁵ Felisa Haryati, Pelanggaran Kode Etik Notaris Terkait Persaingan Tidak Sehat Sesama Rekan Notaris Ditinjau dari Peraturan Kode Etik Ikatan Notaris Indonesia (I.N.I), *Jurnal Hukum Volkgeist*, Vol. 3 No. 1, Fakultas Hukum, Universitas Airlangga, 2018, hlm. 84.

²⁶ Iqbal Putra Pratama, dkk, "Tanggung Jawab Notaris Terhadap Kewajibannya Dalam Hal Pembacaan Akta", *Jurnal Notarius*, Volume 14 Nomor 2, 2021, hlm. 814.

for a notary who does not carry out his obligations according to the code of ethics and UUJN and results in losses for the person or party concerned, the notary can be sued civilly. Notaries are also jointly and severally responsible together with notary office employees as stipulated in Article 1367 of the Civil Code that: "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control. Employers and those who appoint other persons to represent their affairs, are responsible for losses incurred by their servants or subordinates in the performance of the work for which these persons are employed."

Based on the case in Banyuwangi District Court Decision Number 192/Pdt.G/2014/PN.Bwi, the notary concerned can be held civilly liable based on Article 1365 of the Civil Code because he has fulfilled the elements of an unlawful act, namely as follows:

1. The notary did not read Deed Number 31 himself to the presenters and witnesses, but handed over the responsibility of reading the deed to his employees and did not make corrections to any writing or typing errors in Deed Number 31.
2. The action of a notary who does not read the deed and does not make corrections to writing or typing errors constitutes an unlawful act as stipulated in Article 16 (1) point m and Article 51 (2) UUJN.
3. The plaintiff suffered losses in the form of loss of honorarium as administrator of PPLPT-PGRI Banyuwangi.

Apart from Article 1365 of KUHPerdata, notaries can also request compensation based on Article 16 (9) UUJN and Article 51 (3) UUN. However, in the Posita Lawsuit it turns out that the Plaintiff did not explain in detail the losses he experienced so that based on the provisions of civil procedural law, this request for compensation cannot be granted by the Panel of Judges.

As for the notary who did not read the deed himself in the Medan District Court decision Number 347/PDTG/2012/PN.MDN, the plaintiff could not prove that the deed made by the notary was defective in form, so the loss suffered by the plaintiff was not the result of the notary's negligence.

Every error contained in the authentic deed that causes loss, the party who feels aggrieved must prove the location of the error in the information in the contents of the authentic deed. Therefore, if there is a party who feels that their rights have been harmed but cannot prove that there is an element of violation, then the court will not grant that party's claim for compensation.

Violations of not reading the deed by the notary himself to the audience and delegating the obligation to read the deed to his employees, apart from being subject to civil sanctions and witnesses to the code of ethics, can also be subject to administrative sanctions as regulated in Article 16 (11) UUJN, that: "Notaries who violate the provisions as intended in paragraph (1) letters a to l may be subject to sanctions in the form of:

- a. written warning;
- b. temporary dismissal;
- c. honorable discharge; or
- d. dishonorable discharge."

The implementation of administrative sanctions against notaries who violate the provision of Article 16 (1) UUJN is regulated in the Permenkumham No. 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notaries. The legal consideration for the issuance of Permenkumham No. 61 of 2016 is the implementation of Article 91A UUJN which states that: "Provisions regarding procedures for imposing sanctions as intended in Article 7 (2), Article 16 (11) and (13), Article 17 (2), Article 19 (4), Article 32 (4), Article 37 (2), Article 54 (2), and Article 65A are regulated in a Ministerial Regulation."

Administrative sanctions as stated in Article 1 point 1 of Permenkumham No.61 of 2016 state that "administrative sanctions are punishments imposed by authorized officials on notaries for committing mandatory violations or complying with provisions prohibited by law." The imposition of administrative sanctions is carried out in stages starting from the lightest sanctions to the most severe sanctions in accordance with the sequence in UUJN and Permenkumham No.61 of 2016. In certain cases, notaries who commit serious violations of the obligations and prohibitions of notary office can be directly subject to administrative sanctions. without doing it in stages.²⁷

Administrative sanctions regulations place written warnings in the first order of sanctions. A written warning is a warning to the notary from the Supervisory Council as regulated in Article 5 (1) letter b Permenkumham No.61 of 2016, that: "The MPD can impose a written warning sanction on the Notary in the event that the Notary does not carry out his obligations in carrying out his position as "Notary in accordance with the provisions of Article 16 paragraph (1) letters a to letter l of the Law." A notary who is given a written warning sanction, if within 14 (fourteen) days the problem has not been resolved or makes a mistake other than that stated in the first written warning sanction, the notary may be subject to a second written warning sanction. Likewise, if after 14 (fourteen) days of receiving a second written warning sanction, the notary has not resolved the problem or made a mistake other than the error as stated in the second written warning sanction, then a third written warning sanction will be implemented. Furthermore, in the event that the notary's obligations are not carried out and fulfilled within the stipulated time or other mistakes are made, the MPD of Notaries may submit a proposal for temporary dismissal to the MPP of Notaries.

Regulations regarding the temporary dismissal of notaries by the MPP are regulated in Article 7 of Permenkumham No.61 of 2016 that:

- (1) The temporary suspension as intended in Article 6 paragraph (1) is imposed for a period of 3 (three) months to 6 (six) months.
- (2) In the temporary dismissal decision as intended in paragraph (1), the Central Supervisory Council (MPP) of Notary determines the obligations that the Notary must fulfill during the temporary dismissal period.
- (3) When the temporary suspension period has ended and the Notary has not yet carried out his obligations as intended in paragraph (2), the MPPN may propose to the Minister the form of:
 - a. honorable discharge; or

²⁷ Chaterine Felicia Sihite, " Akibat Hukum Bagi Notaris Yang Dijatuhi Sanksi Administratif Oleh Majelis Pengawas Notaris", *Jurnal Notarius*, Vol. 2, No. 1, Januari-Juni 2023, hlm. 57.

b. dishonorable dismissal.

Based on the provisions of Article 7 of Permenkumham No. 61 of 2016, it can be said that a notary who has been sanctioned with temporary dismissal (suspension) for not carrying out the obligations as intended in Article 6 (1) of Permenkumham No. 61 of 2016, the period of administrative punishment has ended, but the notary still does not carry out his obligations to be/act impartially/ neutrally in making authentic deeds, then the MPPN can propose to the Minister of Law and Human Rights to dismiss the notary concerned. Based on the proposal from the MPPN, the Minister of Law and Human Rights can make a decision to dismiss the Notary with honor or dishonor. Notaries who are undergoing a period of temporary suspension (suspension) must submit the Notary protocol to another Notary as the protocol holder.²⁸

Sanctions against notaries in the form of temporary dismissal from their position are intended to prevent notaries from carrying out their official duties for a while before sanctions in the form of honorable dismissal or dishonorable dismissal are imposed on the notary. This sanction can end in the form of reinstating the notary to carry out his official duties again or be followed up with a sanction of honorable dismissal or dishonorable dismissal.

The decision issued by the Notary Supervisory Council is an administrative decision, namely the sanctions given are in the form of civil sanctions, ethical sanctions and administrative sanctions. The limitations that are used as the basis for criminalizing a notary are the formal aspects of the Notary's deed. If a notary is proven to have committed a violation from a formal aspect, he may be subject to civil sanctions or administrative sanctions depending on the type of violation or sanctions from the Code of Ethics and Laws on the Office of Notaries. In certain legal regulations, apart from being subject to administrative sanctions, criminal sanctions can also be imposed, in this regard the UUJN and Code of Ethics do not regulate criminal sanctions for notaries who violate the UUJN and Code of Ethics. If something like that happens then the notary is subject to a general criminal offense. The decision of the Notary Supervisory Panel is only binding on the profession or in the form of ethical sanctions and does not bind criminal sanctions.

Administrative, civil responsibility and the notary's code of ethics are subject to sanctions which refer to the actions carried out by the person concerned, while criminal liability which is subject to criminal sanctions targets the perpetrator (person) who carries out the legal action. Administrative sanctions and civil sanctions are reparatory or corrective, meaning to improve a situation so that it is not repeated by the person concerned or by another notary. Regressive means that everything is returned to the state it was in before the violation occurred.²⁹

Conclusion

The responsibility of a notary who does not read the deed and delegates the obligation to read the deed to a notary employee is that the notary can be subject to civil liability,

namely providing reimbursement or compensation to the aggrieved party. Apart from civil liability, notaries can also be subject to administrative sanctions, namely in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal and dishonorable dismissal. Accountability for the notary's code of ethics can take the form of giving sanctions of reprimand, warning, temporary dismissal (schorsing), dismissal (onzetting) and dishonorable dismissal from association membership. Meanwhile, a person's criminal responsibility can take the form of a prison sentence or imprisonment for an unlawful act he or she commits. These matters are based on findings in jurisprudence regarding the responsibility of notaries who commit unlawful acts.

Suggestions

Notaries in carrying out their positions are expected to comply with statutory regulations in this case, namely UUJN and the Notary Code of Ethics as well as other regulations related therein. The obligation to read the deed by a notary is not only to fulfill the formal requirements for the deed, but by having the deed read by the notary himself, it can provide control for the notary in making the deed and is protected from problems that will arise in the future.

To avoid the degradation of an aunt's deed to a private deed due to the deed not being read by the notary but instead being read by a notary employee, it is recommended that the parties, before signing the deed that has been made by the notary, read the deed themselves to obtain clarity regarding the contents of the deed as well as their rights and obligations.

References

1. Luthfan Hadi Darus, Muhammad. *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, Yogyakarta: UII Press, 2017, 1.
2. Suhaimi, Nurdin MH, Enzus Tinianus. Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh. *Jurnal Ius Civile*. 2023; 7(2):27-45.
3. Cut Novadilla Halid, Sanusi, Novi Sri Wahyuni, Suhaimi. A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act. *International Journal of Multicultural and Multireligious Understanding*. 2023; 10(1):65-73.
4. Pratiwi Ayuningtyas. Sanksi Terhadap Notaris Dalam Melanggar Kode Etik. *Jurnal Ilmiah Hukum Kenotariatan*. 2020; 9(2):95.
5. Wawan Tunggal Alam. *Memahami Profesi Hukum*, Jakarta: Dyatama Milenia, 2004, 87.
6. Ibid, hlm. 88.
7. Burhanuddin. *Tanggung Jawab Notaris Perlindungan Minuta Akta Dengan Cyber Notary*, Pasaman: CV. Azka Pustaka, 2022, 81.
8. Erlinda Saktiani Karwelo. *Prospek Pembacaan dan Penandatanganan Akta Notaris melalui Video Conference*. Tesis, Malang: Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Brawijaya, 2014, 5.
9. Hanna Yustianna Yusuf. *Pembacaan Akta Oleh Notaris Sebagai Syarat Otentisitas Akta*. Tesis, Magister Kenotariatan Fakultas Hukum Universitas Indonesia, 2012, 3.

²⁸ Sjaifurrachman dan Habib Adjie, *Pertanggungjawaban Notaris dalam Pembuatan Akta*, Cetakan Pertama, Bandung: Mandar Maju, 2011, hlm. 46.

²⁹ Kerina Maulidya Putri, (et,al), *Op.Cit.*, hlm. 172-173.

10. Iqbal Putra Pratama, dkk. Tanggung Jawab Notaris Terhadap Kewajibannya Dalam Hal Pembacaan Akta. *Jurnal Notarius*. 2021; 14(2):814.
11. Lumban Tobing GHS. *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1996, 201.
12. Kerina Maulidya Putri. Kewajiban Notaris Melakukan Pembacaan Dan Penandatanganan Akta di Depan Semua Pihak Secara Bersama-Sama. *Jurnal*. 2022; 1(2).
13. Rizky Yunian. Keabsahan Akta Notaris Yang Tidak Dibacakan Oleh Notaris di Depan Para Penghadap dan Para Saksi Saat Penandatanganan Akta. *Jurnal*. 2022; 2(22):290.
14. Salim HS. Dan Erlies Septiana Nurbani, *Op.Cit.*, hlm. 12.
15. Johnny Ibrahim. *Teori dan Metode Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2005, 68.
16. Ridhwan Dirham. *Permasalahan Hukum Akta Notaris Yang Tidak Dibacakan Oleh Notaris*. Tesis, Universitas Indonesia, 2007, 46.
17. Khairunnisa Noor Asufie. Urgensi Standarisasi Kualifikasi Karyawan Notaris di Indonesia. *Otary Law Journal*. 2023; 2(3):224.
18. Hasil wawancara dengan Oti Pertiwi SH, MKn. Notaris di Kota Banda Aceh pada tanggal 15 Mei 2024 pukul 15.00 WIB.
19. Hasil wawancara Ahmad Rifqi Nurilmi. Notaris di Kota Banda Aceh, pada tanggal 27 Mei 2024 pukul 13.30 WIB.
20. Direktori Putusan. https://putusan3.mahkamahagung.go.id/direktori/putusan/880b7304e2de8459a693cb2dbb474_e4f.html [diakses pada 15/10/2023].
21. Arifaaid P. Tanggung Jawab Hukum Notaris Terhadap Akta In Originali. *Jurnal IUS Kajian Hukum dan Keadilan*, 2017, 516.
22. Rahman. Limitasi Pertanggungjawaban Notaris Terhadap Akta Autentik Yang Dibuatnya. *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, 2017, 8.
23. Putri AR. *Perlindungan Hukum Terhadap Notaris Indikator Tugas-Tugas Jabatan Notaris yang Berimplikasi Perbuatan Pidana*, Jakarta: PT. Softmedia, 2011, 9-10.
24. Tirtaamidjaya MH. *Pokok-Pokok Hukum Pidana*, Jakarta: Penerbit Fasco, 1995, 15.
25. Felisa Haryati. Pelanggaran Kode Etik Notaris Terkait Persaingan Tidak Sehat Sesama Rekan Notaris Ditinjau dari Peraturan Kode Etik Ikatan Notaris Indonesia (I.N.I). *Jurnal Hukum Volkgeist*, Vol. 3 No. 1, Fakultas Hukum, Universitas Airlangga, 2018, 84.
26. Iqbal Putra Pratama dkk. Tanggung Jawab Notaris Terhadap Kewajibannya Dalam Hal Pembacaan Akta. *Jurnal Notarius*. 2021; 14(2):814.
27. Chaterine Felicia Sihite. Akibat Hukum Bagi Notaris Yang Dijatuhi Sanksi Administratif Oleh Majelis Pengawas Notaris. *Jurnal Notarius*. 2023; 2(1):57.
28. Sjaifurrachman dan Habib Adjie. *Pertanggungjawaban Notaris dalam Pembuatan Akta*, Cetakan Pertama, Bandung: Mandar Maju, 2011, 46.
29. Kerina Maulidya Putri, *et al.* *Op.Cit.*, hlm. 172-173.