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Liability of Notary who is Careless in Conducting its Authority towards Legalization of Non Authentic Deed

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Abstract

Article 15, paragraph (2), letter an of Law Number 2 of 2014 regarding the Notary Position stipulates that "Notaries are empowered to authenticate signatures and ascertain the date of private documents by recording them in a designated register." The process of converting a private paper into a genuine deed through a notary is referred to as legalization. Notaries frequently overlook their authority in authenticating private correspondence. This study employs

the normative juridical research technique. This research aims to analyze and elucidate the legal liability of notaries who exhibit negligence in executing their authority for the authentication of private papers. The research findings indicate that notaries who fail to exercise their authority in authenticating private documents are liable and subject to administrative, civil, and maybe criminal penalties.

Keywords: Liability, Notary, Careless, Legalization, Non Authentic Deed

Introduction

A notary is a public official who practices law, and therefore, a notary possesses adequate professionalism (quality of knowledge) and good moral integrity. Anyone who has been appointed as a notary and has taken the oath of office possesses professionalism and moral integrity. The principle of prudence is one of the most important foundations that must be applied or implemented by a notary in carrying out their duties ^[1].

A notary is an honorable position of trust and in carrying out their duties, they are required to be diligent or careful. However, in the process of legalization, a notary must essentially be careful not to get entangled in disputes between parties, even though it is not explicitly regulated in Law Number 2 of 2014 concerning the Notary Position (hereinafter referred to as UUJN). Regulations regarding the principle of prudence in the UUJN in the legalization process, which is the notary's authority, must be clearly defined to avoid legal issues that could bring notaries to court. So that the deeds made by the notary still have strong power and are not degraded because they do not meet the formal requirements as stipulated by the Law. Notaries are authorized to create authentic deeds as stipulated in the provisions of Article 15 paragraph (1) of the UUJN, which states that "Notaries are authorized to create authentic deeds regarding all actions, agreements, and determinations required by legislation and/or desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of the deed's creation, store the deed, provide the original, copies, and excerpts of the deed, all of which are as long as the creation of the deed is not also assigned or excluded to other officials or other persons designated by law." Furthermore, the authority of a notary is mentioned in Article 15 paragraph (2) letter a of the UUJN, which states that "Notaries are also authorized to authenticate signatures and establish the certainty of the date of private documents by registering them in a special book." Notaries have the authority to create authentic written evidence that describes events and legal actions carried out by an individual or a group of individuals ^[2].

Notaries, in carrying out their functions, have a neutral position, unlike other state officials. The presence of a notary based on their functions and roles is directly determined by legal regulations, namely the Notary Law (UUJN). The presence of a Notary is aimed at providing assistance and serving the community under the authority granted to them based on legal regulations so that the position can be carried out correctly and does not conflict with other positions.

Legalization is a form of validation of a private document where the signing of the document is done by the parties in the presence of a notary, and at that time the notary will also provide certainty regarding the date of the document. Previously, in carrying out legalization, the notary is required to ensure that the authorized parties are present and then explain and read the letter that will be legalized. The parties themselves must also know the notary before signing. The provision clearly states that the notary's authority related to legalization does not cover the content of the agreements or contracts made by the parties. Notaries only perform the legalization and recording of private documents brought by the interested parties.

One of the most important things in legalizing a deed by a notary is that the legal act performed does not contradict the law. If the legal actions taken by the parties involved in the private agreement are contrary to the law, the Notary is obliged to refuse to legalize the private document^[3]. The reality that has occurred in the field based on the following decisions, namely: Decision No. 151/Pdt.G/2010/PN Ska, Decision 677/PDT/2020/PT DKI, and Decision No. 269/PID/2020/PT PDG show that there are notaries who have been negligent in exercising their authority to legalize underhand documents, resulting in losses for one of the parties involved with the underhand document. Based on this, this research aims to analyze and explain the legal responsibility of notaries who are negligent in exercising their authority regarding the legalization of private documents.

Research Method

The type of legal research used is normative legal research, which is a scientific research procedure to find the truth based on scientific logic from its normative side^[4]. This research uses three types of methodological approaches, namely the statute approach, the case approach, and the conceptual approach. The data sources used in this research come from legal research reports, which are obtained through library research^[5]. This research is primarily based on secondary data. Secondary data for this research uses primary, secondary, and tertiary legal sources^[6]. The method used for analysis is both descriptive and qualitative.

Results and Discussions

The presence of a Notary, whose purpose is to assist and serve the community in need of authentic written evidence related to a situation, event, or legal act, has been regulated in the UUJN. In that Law, specifically in Article 15 paragraphs (1), (2), and (3), it also regulates or enumerates the authority of a Notary as follows:

1. Notaries are authorized to create authentic deeds regarding all acts, agreements, and determinations required by legislation and/or desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the deed's creation date, store the deeds, provide gross copies, duplicates, and excerpts of the deeds, all as long as the creation of the deeds is not also assigned or excluded to other officials or persons designated by law.
2. In addition to the authority as referred to in paragraph (1), a Notary is also authorized to: Authenticate signatures and establish the certainty of the date of a private deed by registering it in a special book; record private deeds by registering them in a special book;

make copies of the original private deed in the form of a copy that contains the description as written and depicted in the relevant deed; certify the conformity of a photocopy with the original deed; provide legal counseling in connection with the making of an act; create acts related to land;

3. or create auction minutes acts. In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authorities regulated by legislation.

Article 15 paragraphs (1), (2), and (3) of the UUJN regulate the authority of Notaries, including the authentication of private deeds. Article 15 paragraph (2) letter a of the UUJN states the authority of a Notary in authenticating signatures on private documents by registering them in a special book. It is increasingly clear that the notarization of private documents by a Notary has a clear legal existence and is capable of providing legal certainty.

Based on the above, it is known that the purpose of legalization is to affirm the signatures of the parties involved in a legal relationship in an agreement or a privately made letter. By being legalized by a notary, a private letter gains evidentiary power in court. However, the legalization process does not require the notary to determine the substance of the document but only to authenticate the signatures and set the date as previously made by the parties. As for several cases of notarizing private letters where the notary is deemed negligent in exercising their authority, they are as follows:

1. Decision No. 151/Pdt.G/2010/PN Ska
2. Decision 677/PDT/2020/PT DKI, and
3. Decision No. 269/PID/2020/PT PDG.

The three court rulings are interesting to examine because they each have their legal issues. If we refer to the three cases above, it can be said that the notary has been negligent in exercising his authority in legalizing the documents below. This can be seen in the following explanation.

First, in Decision No. 151/Pdt.G/2010/PN Ska, it is known that the notary legalized a private power of attorney to sell a piece of land, which the grantor of the power of attorney had never authorized as stated in the private document. Next, the power of attorney recipient in the private deed also never appeared before the Notary to legalize the power of attorney they received. This means that, in this case, there was negligence on the part of the notary because they did not examine and present the parties in the process of legalizing the underhand power of attorney.

The second ruling 677/PDT/2020/PT DKI, in this decision, stated that the notary did not pay attention to the provisions of the legislation in legalizing a personal guarantee agreement made by a husband. Because based on the Marriage Law Article 36 paragraph (1), any form of agreement made by the husband must be based on the wife's consent because both have equal standing.

Third Decision No. 269/PID/2020/PT PDG, based on this decision, the notary is considered negligent because he legalized the Land Sale and Purchase Agreement which was fabricated and made with criminal intent (*mens rea*), so in this case, the legalization can be said to be legally flawed.

Based on the case above, in the matter of legalization, there is an unlawful act by the notary due to negligence in exercising his authority during the legalization process. The

negligence of the notary in exercising their authority can be held accountable, under the theory of legal responsibility which states that an act by a legal subject that is deemed to be legally contrary can be held accountable.

Notaries who have the authority to carry out legalization under the UUJN bear full responsibility for unlawful acts committed in the legalization of private documents. Every notary who neglects their duties receives sanctions in the form of a written warning, temporary suspension, honorable dismissal, or dishonorable dismissal. In addition to those sanctions, Notaries also receive ethical code sanctions from the Notary Supervisory Council^[7].

The results of the interview with the source regarding the authority of notaries in legalizing private documents mentioned that notaries have the authority to legalize private documents^[8]. However, in the execution of that authority, the notary must apply the principle of prudence to avoid disputes in the future^[9].

The mechanism for applying the principle of prudence by notaries in legalizing private deeds does not have a fixed provision, but in general, several things must be considered in applying the principle of prudence by notaries in the legalization of private letters:

1. Master all regulations related to the duties of his position.
2. Presenting the parties bound by a private deed before a Notary
3. Seeing the characteristics of the parties (honest and not manipulative) who need notary services.
4. Paying attention to the similarity of the parties' signatures with other related documents
5. Each legalization process presents witnesses.
6. Taking photos during the legalization process.

Referring to the provisions of the UUJN and based on the theory of legal certainty, it is stated that in the case of legalization, the Notary is obliged to be responsible for the legalized private deed because after the legalization process, a private deed has strong evidentiary power as it has been legalized by the notary as the authorized public official for that purpose. Based on the theory of legal certainty, a private document that has received an affirmation of validity through the legalization process by a notary has obtained certainty from a legal standpoint.

The notarization of an underhand document has a fairly clear legal certainty. Legal certainty includes the existence of laws that can regulate the behavior of Notaries in carrying out their profession and duties so that they can act professionally and under applicable norms and ethics. A Notary in performing the authentication of a private document must be able to behave and act under the provisions outlined in the UUJN, which requires them to act with trustworthiness, honesty, diligence, independence, and impartiality. In carrying out the authentication of a private document, a Notary must also act diligently in following the applicable procedures.

The procedure referred to is the procedure under UUJN, such as first registering the private letter in the special book that has been provided. Conduct the recording of handwritten letters in a special book, create copies of the handwritten letters containing descriptions of their contents, provide legal counseling related to the creation of deeds, and so on.

Referring to the theory of procedural justice, every procedure undertaken by a Notary in the legalization of an underhand document should inherently apply the value of balance, in other words, not show bias in legalizing an underhand document, so that the Notary is not considered negligent and does not cause harm to other parties bound by that underhand document. Thus, it can be said that a Notary has the responsibility to ensure that they are capable of executing, implementing, and realizing the legal framework governing the authentication of private documents, including examining or verifying the validity of agreements made by the parties involved. This form of responsibility must be carried out to achieve the goal of legal certainty, which is to provide a sense of security and legal assurance to the public to support the increase in public trust in Notaries.

Notaries do not have any responsibility for the content or cause of the related private deed. The notary is only responsible for registering and recording the private deed in the private deed register book. This means that if any issues arise between the parties involved in the agreement, the Notary is not responsible for the content of the agreement. However, a private deed that has been registered and recorded in the private deed register by a Notary can be used as evidence if needed.

If, in carrying out his duties, a Notary is proven to behave deviantly or violate the UUJN, then in terms of legal protection, the Notary is obliged to be responsible for his actions that harm the community or the state. In this case, an example can be given that if it is proven that the Notary was negligent in handling a contract, then the Notary must be held accountable for their detrimental actions. The form of responsibility as legal protection for the parties is through the imposition of sanctions regulated in the Notary Office Law, including civil sanctions, administrative sanctions, ethical code sanctions, and finally, criminal sanctions. Thus, the form of responsibility in the effort to provide legal protection for the notarization of private documents by a Notary is the imposition of sanctions on the Notary by the provisions of the Notary Office Law if the Notary is proven to have committed actions that deviate from and violate the Notary Office Law, the Criminal Code, or the Notary Code of Ethics.

That is a form of legal protection for notarizing private documents by a Notary for the public who use Notary services. However, suppose the issue that arises is related to the content of the agreement by the parties who agreed. In that case, the form of responsibility in the authentication of the private deed by the Notary is to exercise the authority of the Notary as stated in the Notary Office Law, which is to present the registered private deed and record in the private deed register book as evidence. However, in such cases, the Notary does not bear responsibility for the content of the agreement which becomes problematic for the parties who agreed.

Conclusion

To conclude, based on the UUJN, a Notary must act honestly, faithfully, and impartially. And the legalization process must comply with the procedures outlined in the UUJN provisions. If a notary is negligent in carrying out their authority, such as in the legalization process, the notary is held responsible. This responsibility includes administrative sanctions, civil sanctions, and even criminal

sanctions. The negligence of a notary must be proven through a court decision, therefore further proof is required against the notary who is negligent in carrying out their authority through court proceedings.

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