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The Legal Responsibility of Notaries for Discrepancies between the Minute and the Authentic Copies of the Deed

¹ Mawaddatul Rahmah, ² Sanusi, ³ Muhammad Zaki

¹ Student, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

^{2,3} Lecturers, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

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Corresponding Author: **Mawaddatul Rahmah**

Abstract

Article 16 paragraph (1) letters a, b, and c of Law Number 2 of 2014 concerning the Notary Act explains that in carrying out his duties, a notary is obliged to: act honestly, diligently, independently, impartially, and safeguard the interests of the parties involved in legal acts; create deeds in the form of minute deeds and keep them as part of the notary's protocol; issue grosse deeds, copies of deeds, or excerpts of deeds based on minute deeds. A copy of a deed is a derivative of a minute deed and an inseparable part of the minute deed; both are deeds and must be made with the same wording. This is regulated in Article 1 points 8 and 9 of the Act, which states that "a minute deed is the original notarial deed, and a copy of the deed is a word-for-word copy of the entire deed, and at the bottom of the copy of the deed, the phrase 'given as a copy with the same wording' is included." This research employs a normative juridical method, utilizing three approaches: the statutory approach, the conceptual

approach, and the case approach. This research is based on secondary data. The data is analyzed descriptively and qualitatively using legal interpretation. The purpose of this research is to explain the legal responsibility of notaries regarding the discrepancies between the minute of the deed and the authentic deed copy. The research results show that the notary's responsibility depends on the presence of elements of error, negligence, and loss experienced by the parties. The notary can be held legally accountable administratively, civilly, and criminally. Administrative legal accountability can take the form of written reprimands, temporary suspension, or dismissal without honor. Civilly, the notary can be sued for unlawful acts that cause loss to the parties. Criminally, if elements of intent, forgery, or abuse of authority in the creation of the deed are proven, the notary can be imprisoned for the forgery of authentic deeds under Article 266 of the Criminal Code.

Keywords: Legal Responsibility, Notary, Minute of Deed, Copy of Deed, Authentic Deed

Introduction

Notaries, as public officials, have the exclusive authority to create authentic deeds as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Notary Position (hereinafter referred to as the UUJN). A notarial deed is a written piece of evidence that has perfect evidentiary power in the eyes of the law, because it is classified as an authentic deed as stipulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code). Article 1868 of the Civil Code "determines that an authentic deed is a deed made in the form prescribed by law, by or in the presence of an authorized public official for that purpose, and at the place where the deed is made."

A complete explanation regarding the authority of a notary in making an act is regulated in Article 15 of the UUJN. A copy of the act is a derivative of the act's minute and an inseparable part of the act's minute; both are acts and must be made with the same wording. This is regulated in Article 1, paragraphs 8 and 9 of the UUJN. This copy has the same evidentiary power as the original act's minute, as long as its content is exactly the same ^[1]. Article 48 of the UUJN stipulates that "The content of the deed may not be altered or added to, whether by overwriting, insertion, crossing out, or deletion and replacing it with something else. Changes to the deed in the form of additions, substitutions, or deletions in the deed are only valid if such changes are initialed or marked with another form of confirmation by the appearing party, witnesses, and Notary."

One concrete case that reflects a violation of Article 48 of the UUJN is Decision Number 146/PDT/2018/PT.BDG. In this case, the notary created a lease deed for a shop (ruko) between Juju Andriyani and PT Indomarco Prismatama before Notary Umang

Retno Ayu Melasari, S.H., there was a request to open the authentic deed *minuta* No.31. However, in the trial, the copy of the deed's minutes did not match the deed's *minuta*. In the minutes of the deed, there are apparently many scribbles, alterations, insertions, additions, and overlapping writings, which are not typographical errors. The legal fact representing PT Indomarco Prismatama was not presented during the signing of Authentic Deed No. 31 of 2016 by Notary Umang Retno Ayu Melasari, S.H. (this is evidenced by the absence of documents and fingerprints attached to the deed's minute) ^[2]. In the closing of Notarial Deed No.31, Umang Retno Ayu Melasari, S.H wrote the phrase "carried out without any changes" indicating that there should be no changes in the authentic deed minutes No.31, but in reality, the deed minutes have many changes, as stated in the authentic Deed No.31. But, there is the phrase "given as an identical copy." The authentic deed copy must be the same as the deed minutes, but in reality, it is not the same. In the received copy of the deed, there are unilateral additions and deletions of clauses that were never agreed upon by the parties. The changes were even made without a valid legal procedure, and no amendment record (*renvoi*) was created as stipulated in Article 51 of the UUJN. This has caused legal and economic losses to Juju Andriyani, prompting her to file a civil lawsuit against the company and the notary. The unilateral alteration of the substance of the deed has violated the provisions of Article 48 of the UUJN. The content of the deed is prohibited from being changed (*renvoi*) or added to with "whether in the form of overwriting, insertion, deletion, or replacement with something else."

This case reveals a gap in the practice of notarial services, particularly in terms of monitoring the content of deeds and adherence to formal procedures. The difference in content between the *minuta* and the copy is not only an administrative violation but can also result in the legal nullification of the deed and the emergence of civil and ethical liability for the notary. Based on the background of the legal issue above, further in-depth research is needed to determine the legal responsibilities of notaries regarding the discrepancies between the minutes of the deed and the authentic deed copy.

Research Method

which makes norms and rules the main basis, focusing on what is written in laws, court decisions, agreements, and doctrines to regulate human behavior appropriately. The research approaches used in this study are the statute approach, case approach, and conceptual approach. The legal data sources used in this research are secondary data and primary data. Secondary data consists of primary, secondary, and tertiary legal materials obtained through literature review. Primary data refers to field data obtained through interviews with informants. Data analysis in this study uses descriptive and prescriptive analysis methods.

Results and Discussions

1. The legal responsibility of a notary regarding discrepancies between the minute of the deed and the authentic deed copy from an administrative perspective
Responsibility is a condition of a legal subject who is obliged to bear the consequences of unlawful acts or civil or criminal offenses they commit, so the legal subject can be held liable to pay compensation and/or serve a sentence. In

this case, a Notary can be held accountable for the material truth regarding the errors in the deed or their lack of diligence. In the case of the Notary's accountability, there are sanctions imposed on Notaries who violate regulations or perform their duties not in accordance with what is intended for the Notary themselves, and with the imposition of these sanctions, the aim is to uphold the dignity of the Notary as an authorized public official.

In the realm of civil law, a Notary is responsible for the material truth of the deed based on the principle of unlawful acts. This act can be active, meaning taking actions that harm another party, or passive, meaning failing to fulfil obligations resulting in harm to another party. Based on Article 1338 of the Civil Code, a valid agreement binds the parties like a law and can only be amended or cancelled by mutual agreement or legal provisions. Therefore, the Notary must ensure that all parties understand and agree to the contents of the deed before it is signed ^[3]. The discrepancy between the minute of the deed and the authentic copy of the deed results in the notary's legal responsibility in a Civil manner (compensation, proof of the deed being downgraded to a private deed), Criminal (if it meets the elements of a crime such as forgery), and Administrative (disciplinary witness from the Notary Honorary Council, including temporary dismissal). Notaries are responsible for ensuring the conformity of the deed minutes and the authentic deed copies in accordance with the Notary Office Act (later called as the UUJN) and the Code of Ethics, because discrepancies can cause the deed to lose its authentic evidentiary power, which can be detrimental to the parties involved ^[4].

The demand for accountability by a notary arises from the occurrence of a dispute related to the deed that has been made by fulfilling the elements of an unlawful act, which includes human actions that meet the formulation of statutory regulations, meaning the principle of legality applies, *nullum delictum nulla poena sine praevia lege poenali* (there is no prohibited act and no punishment if it has not been stated in the law), and the act is an unlawful act. This concept of accountability, when related to the profession of a Notary, means that the Notary can be held accountable for mistakes and negligence in the performance of their duties and responsibilities ^[5]. Notaries, as public officials (*openbaar ambtenaar*), are authorized to create authentic deeds. In connection with their authority, notaries can be held responsible for their actions in creating authentic deeds. Unlawful acts here can be either active or passive. Active, in the sense of committing acts that cause harm to others. While passive, in the sense of failing to perform acts that are mandatory, resulting in harm to others. Therefore, the elements of unlawful acts here are the existence of an unlawful act, the presence of fault, and the resulting harm.

Administrative sanctions are penalties imposed by authorized officials on Notaries due to violations of obligations or non-compliance with provisions prohibited by legislation. The forms of administrative sanctions regulated in the UUJN can include written or verbal warnings, temporary suspension, honorable dismissal, or dishonorable dismissal. The notary's responsibility for the discrepancy between the original deed (*minuta*) and the authentic deed copy is administratively centered on the violation of office duties as regulated in the UUJN. A notary must possess high moral values so that the authority they hold is not misused. A low moral attitude held by a notary will shape a personality that tends to be inappropriate and disobedient to

the regulations of the office and the Notary Code of Ethics [6]. Notaries are required to be administratively accountable, and violations of administrative provisions in the creation of deeds or non-compliance with the provisions of articles 38, 39, 40 of the Notary Office Law will result in sanctions. Administrative sanctions are penalties imposed on Notaries by authorized officials for committing violations that must be carried out or for failing to comply with provisions prohibited by legislation [7].

The administrative responsibility of a notary is the violation of the main obligation, which is that the notary must ensure that the copy of the deed provided to the parties is exactly the same as the deed's minute as stated in Article 16, paragraph 1, letter m of the UUJN. This discrepancy is considered a neglect of duty. Administrative Sanctions under the UUJN based on Article 85 of the UUJN, if a notary violates obligations such as Article 16, they may be subject to tiered administrative sanctions by the Notary Supervisory Council, which include Verbal Warnings, Written Warnings, Temporary Dismissal, Dismissal with Honor, and Dismissal without Honor. Based on the Supreme Court Decision No.146/Pdt/2018/PT.Bdg, an example of a notary's administrative accountability case is the unilateral alteration of the deed's minutes by the notary without the presence of the parties. Notaries must be held accountable for the legal defects in the deeds they create (which become private deeds) due to violations of administrative procedures. The Legal Administrative Responsibility is that the deed is null and void by law because it violates Article 51 paragraph (2) of the Notary Position Law. The notary is liable for compensation (costs, damages, and interest) in accordance with Article 1365 of the Civil Code, due to negligence in the procedure of creating an authentic deed.

2. The legal responsibility of notaries for discrepancies between the minutes of the deed and the authentic deed copy from a criminal law perspective

The notary's responsibility for discrepancies between the original deed (*minuta*) and the copy of the deed in criminal matters is absolute and can be personally prosecuted, as the notary does not have immunity if proven to have committed a crime in their official capacity. When the provided copy of the deed differs in content from the stored *minuta*, the notary violates the principle of caution and the legal obligation to create a valid authentic deed [8]. According to the interview results, the form of criminal responsibility, a notary is criminally liable if they intentionally or negligently create a false deed or one that does not match the minutes, causing harm to another party. Notaries can be charged under Article 264 paragraph (1) of the Criminal Code (Forgery of authentic deeds) with a maximum prison sentence of 8 years, or Article 266 of the Criminal Code (ordering the insertion of false information into an authentic deed).

Based on the analysis of the PT Bandung decision No.146/PDT/2018/PT.BDG, this case highlights the notary's accountability due to unilateral changes to the rental agreement minute. This case focuses on the violation of Article 51 of the Notary Position Law, where changes were made without the presence of the parties and witnesses, causing the deed to degrade into a private deed and lose its legal force, and the Notary faces criminal liability. The Notary's liability in this decision, the notary is deemed legally responsible (civil and criminal) for violating the mandatory procedure for amending the deed (*renvoi*) which

should have been attended by the parties, witnesses, and recorded in a report. This case emphasizes that notaries are required to adhere to formal rules in the creation and amendment of deeds to avoid criminal liability for document forgery [9].

3. The legal responsibility of a notary regarding the discrepancy between the minute of the deed and the authentic deed copy in the perspective of civil law

The notary is responsible for the discrepancy between the draft deed and the copy of the deed because it constitutes an unlawful act (PMH) based on Article 1365 of the Civil Code, requiring compensation for material or immaterial losses to the aggrieved party due to negligence or error in ensuring the copy of the deed is the same as the draft deed. This responsibility arises because the notary's mistake causes the deed to lose its authentic power, allowing the aggrieved party to claim compensation. The basis of civil liability is an unlawful act (PMH), which constitutes a discrepancy that meets the elements of PMH, namely the existence of an act, the fault or negligence of the notary, whether active or passive, and the loss to another party. Article 1365 of the Civil Code states that any unlawful act that causes loss to another person obliges the person who caused the loss to compensate for it [10].

The form of liability for damages allows the aggrieved party to demand compensation from the notary, whether material, such as additional costs, or immaterial, such as losses due to an invalid deed. An inauthentic deed is one where, if discrepancies are found, the copy of the deed loses its evidentiary power as an authentic deed and only becomes a private deed, which can lead to legal conflicts. Civilly, the legal construction used for the Notary's responsibility regarding the material truth of a deed made by him is the construction of an unlawful act. Article 1365 of the Civil Code states that "any unlawful act that causes loss to another person obliges the person who caused the loss due to their fault to compensate for the loss." The form of civil liability for the unlawful act by the notary, which causes the deed to be canceled or invalidated, resulting in loss to the parties, allows the parties to file a civil lawsuit for damages against the notary [11]. The legal construction used in civil liability for the material truth of the deed made by a Notary is the unlawful act construction in Article 1365 of the Civil Code. What is referred to as an unlawful act has both active and passive characteristics. Active in the sense of committing an act that causes loss to other parties, thus making the unlawful act an active one. Passive in the sense of not performing a certain act or obligation, which can cause loss to other parties. The elements of this unlawful act include the existence of an unlawful act, the presence of fault, and the resulting loss [12].

Based on the PT Bandung decision No.146/PDT/2018/PT.BDG, an example of the notary's civil liability arises when the notary unilaterally alters (*renvoi*) the contents of a lease agreement without the consent of the parties involved. The notary is civilly liable because the deed loses its full evidentiary power and harms the tenant/owner, which potentially violates the Notary Office Law. The notary, as a public official, the shop owner (plaintiff), and the tenant (defendant). The form of civil liability, because the unilateral change caused the authentic deed to degrade into a private deed. Notaries can be sued for damages, costs, and interest to the aggrieved party (Article

1365 of the Civil Code or Article 84 of the Notary Position Act) due to unlawful acts (tortious acts) committed in the course of their duties. Based on interview results from various studies, the civil liability for an authentic deed that does not match the deed's minute is that the notary will provide compensation (unlawful act). The notary can be sued to cover costs, damages, and interest to the aggrieved parties. This is based on Article 1365 of the Civil Code regarding unlawful acts (PMH) if negligence or intent is proven in the creation of the deed ^[13].

Conclusion

In summary, notaries responsible for such inconsistencies may face legal accountability on administrative, civil, and criminal grounds. Notaries may face sanctions from the Notary Supervisory Council, including oral reprimands, written reprimands, temporary suspension, or removal without honour. A notary may be held liable for unlawful activities (PMH) and have to pay compensation, costs, and interest to the aggrieved party pursuant to Article 1365 of the Civil Code. A notary may be held criminally accountable if the disparity arises from intent or negligence that satisfies the criteria of a criminal offence, such as document forgery or the provision of incorrect information in an authentic deed.

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