

# RECONSTRUCTION OF NOTARY LIABILITY FROM AUTHENTIC DEALS AS A LEGAL PROTECTION

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## ABSTRACT

*Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia is obliged to carry out law enforcement that reflects justice, certainty, and maximum benefit for the purpose of protecting law, order and people's welfare. Law Number 2 of 2014 concerning Amendments to the Law on Notary Positions Number 30 of 2004 concerning Notary Positions has been enacted as a substitute for Regalement op Het Ambit in Nederland's Indie (Stbl. 1860:3) or Notary Position Regulations (PJN). In carrying out his duties and positions, a Notary/Official Land Deed Maker must comply with existing regulations and all applicable regulations, without prejudice to anything that exists in the community. The problems faced are How is the Notary's responsibility to the authentic deed made not fair? What are the weaknesses of Notary's responsibility to the authentic deed made? How is the reconstruction of Notary's responsibility to the authentic deed made based on the value of justice?*

*The method used in this study is a constructivist, descriptive and normative juridical paradigm because this research is intended to produce a reconstruction of thoughts or ideas as well as a new theory in terms of the Notary's accountability to the authentic deed made.*

*If viewed from the above provisions, Article 8 of the UUJN Number 30 of 2004 in conjunction with Article 65 of the UUJN Number 2 of 2014 then the Notary who has retired must still be responsible for the deed he made. Responsibilities of Notaries when viewed from Law Number 30 of 2004 concerning Notary Positions are very closely related to the duties and work of Notaries. The principle of responsibility used is accountability based on mistakes. From the experience of Notary officials while responding to the existence of justice, it is hoped that a reconstruction of the Notary's responsibility is based on the experience of previous Notaries, so it is important for the reconstruction of the Notary's responsibility to refer to the Notary Position Act that is in effect to date. In the provisions of Article 65 of the Amendment Notary Act, it is stated that the Notary must be responsible for every deed he has made even though the Notary protocol has been submitted or transferred to another Notary. This provision provides a ambiguous understanding because the clause in the article does not explicitly state how long a Notary must be responsible for the deed he has made. Expires, the person concerned also ceases to be responsible for the position he has held.*

**Keywords:** Reconstruction, Notary Accountability, Justice

## INTRODUCTION

A Notary in carrying out his obligations must understand each task that will be faced. Must work independently, honestly, impartially and full of responsibility and provide professional services to people who need their services. The profession of a notary is a noble profession which

helps provide certainty to the legal relationship that is built by the parties in carrying out social life, so that the income for his services should not be used as the main motivation, but becomes the main motivation (Habib, 2017).

If the parties do not agree on the deed in question to be canceled or they have a dispute, one of the parties can sue the other party to the general court to cancel the contents of deed in question so that it is no longer binding. That which is canceled by the parties, either by agreement or through a court decision, is the content of the deed, because the contents of the deed are the will of the parties. The formal aspect of the Notary deed is the responsibility of Notary, which can also be canceled by the parties if it can be proven through a court decision, for example one of the parties wants to deny the date before the Notary is not as stated at the beginning of the deed, but another date which he believes is correct based on the evidence he has. The problem of denying the time to face it, can only be done by the parties with certain aims and objectives, for example to avoid the obligations that must be fulfilled by the person concerned as stated in the deed he has signed.<sup>19</sup>

In the imposition of sanctions against a Notary, if it is in the form of civil sanctions because the Notary deed which has the power of proof as an underhand deed and the Notary deed is null and void, it is a sanction related to the product of Notary proposed by the party or appearer whose name is in the deed or experts his inheritance. The sanction was imposed because the Notary violated the provisions referred to in Article 84 of the UUJN. If the sanction is imposed or given to a Notary, then there must be legal efforts from the Notary to defend the rights of the Notary, with the aim of obtaining a balanced, objective examination from other parties, in this case from the state administrative court (Habib, 2008).

Although the Notary Office Act (UUJN) does not mention the application of criminal sanctions, a legal action against a violation committed by a Notary contains elements of intentional forgery or negligence in making an authentic vote or deed whose contents are false, then after being sentenced administrative sanctions/professional code of ethics for the position of Notary and civil witnesses can then be withdrawn and qualified as a crime committed by a Notary that explains the existence of evidence of intentional involvement in the crime of falsifying authentic deeds.

However, in accordance with the provisions of the time limit in carrying out the duties of his position, it is not explained about the time limit for Notary's responsibility for the deed he made. Even Article 65 of the UUJN stipulates that: Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials are responsible for every deed made even though the Notary Protocol has been submitted and transferred to the Notary Protocol custodian. Taking into account the provisions of Article 65 of the UUJN, the Notary Officer remains responsible for the deed he made. Therefore, there is confusion regarding the limits of the Notary's liability based on Article 65 of the UUJN, namely, even though all deeds made by a Notary have been submitted or transferred to the Notary's protocol custodian, even though they have stopped or are no longer serving as a Notary, they must still be responsible for the rest of their lives (Sugondo, 2007).

The principle of accountability used is accountability based on errors. Indeed, there are still weaknesses of Notaries in making authentic deeds and the importance of holding the principle of prudence so that problems do not occur in the future. From the experience of Notary officials as long as to respond to the existence of justice, it is hoped that a reconstruction of the Notary's responsibility is based on the experience of previous Notaries, so it is important for the reconstruction of the Notary's responsibility to refer to the Notary Position Act which is in effect to date.

Based on the description above, the authors are interested in conducting research on "reconstruction of notary responsibility to authentic deals made based on justice value" (Santosa, 2014).

## RESEARCH METHODS

Approach Method Because the problems raised in the research are socio legal in nature, the research approach used is a socio legal approach (Socio Legal Approach), thus the focus of this research is to make a description of social and legal reality, as well as trying to understand and explain the logic of logical connection between both of them.119

In addition to achieving the expected goals, the authors will also use the following approaches in an integrated manner, namely: 120

- a) Historical approach,
- b) Yuridis Dogmatis Approach is used as a means of reviewing the authentic deed made.
- c) The statutory approach is used to examine the harmonization of the law which contains and will contain provisions relating to the Notary's responsibility for the authentic deed made.
- d) Conceptual approach, is used to develop a conception of the Notary's responsibility for the authentic deed made so that it becomes a reference
- e) In the future the achievement of fair law enforcement.
- f) The philosophical approach, is used to examine from the philosophical side of the Notary's responsibility for the authentic deed made. This approach is used in order to explore the values behind the importance of law enforcement in Indonesia.

### Data Collection Methods and Legal Materials

Primary data collection is done by conducting interviews with several respondents who have been determined as samples. Then the data obtained from the results of free guided interviews and compiled for further analysis.

The collection of secondary legal materials in this study was carried out by means of a documentation study and a literature study to search the legal literature. The collection of legal materials is done by searching for all laws and regulations related to the problems in this research, both legislative and regulatory in nature, even delegated legislation and delegated regulation (Hernoko, 2008).

The legal materials were collected by conducting a search of legal literature, both printed legal materials and legal materials downloaded from online. Unwritten legal materials will be traced through the results of legal (customary) research that has been carried out in several areas published by both university researchers and independent researchers. Legal materials in the form of court decisions that have permanent legal force will be obtained from the jurisprudence of the Supreme Court of the Republic of Indonesia, the directory site of the decisions of the Supreme Court of the Republic of Indonesia, as well as court websites relating to the responsibility of the Notary to the authentic deed made (Muhammad, 1992).

Researchers will conduct an inventory, qualification, understanding, interpretation of these secondary legal materials. The legal materials that have been obtained are used as a basis for reviewing and analyzing the problems in this research, as well as to explore basic theories and basic concepts, as well as to follow the development of theories in the fields related to the problems to be studied in order to gain orientation broader and holistic approach to the problem to be studied, and to avoid duplication of research (Manan, 2000).

### Data Analysis Method

Primary data obtained from the field will be collected, inventoried, then analyzed using the inductive qualitative analysis method, to describe the overall state of the research object in general, which will then be combined with secondary data in the form of legal materials obtained from the

results of literature study only theory, one kind of data and one research method.<sup>128</sup>This triangulation includes (Kansil, 2011)

- 1) Data triangulation, meaning that data collected from different sources, places and roles is cross-checked. Source triangulation is done by comparing the observed data with the results of interviews,
- 2) Triangulation theory, meaning that a research topic is studied from various aspects and theoretical perspectives.
- 3) Triangulation method, meaning that the data obtained is the result of the application of several data collection methods to strengthen the validity of data.

After the data is considered valid, it is then constructed to gain a broader understanding of the problems posed in this study. Before being constructed, the collected data were analyzed emic and etic. <sup>130</sup> An emic analysis is needed to gain an understanding of the meaning of justice according to perpetrators of victims and newspapers/families of victims of crimes against life and body. The results of emic analysis are then interpreted ethically according to the understanding of others, both selected literature and from religious leaders, and so on. With the combination of emic-etic analysis, it is hoped that research results will not only stop at the descriptive level, but also come to the level of explanation (explanation) so that it can be understood more broadly and comprehensively about the meaning of justice in the practice of law enforcement and justice (Cansil et al., 2007).

## DISCUSSION

### **The Notary's Accountability against Authentic Deeds Made Unfair**

#### **Absolute Liability which means that an Individual is Responsible for the Offense he committed because it was Unintentional and Unforeseen**

The Notary's responsibility for the authentic deed he made must be based on the concept of a Notary as a position. Where as long as the Notary still has the authority to make a deed, so long as the responsibility for the deed made is attached and charged to him. So that if the Notary has resigned from his position either temporarily or permanently, then at the same time his authority to make a deed is limited and has an impact on releasing the burden of responsibility that he bears for any problems that arise related to the authentic deed he made (Darus et al., 2017).

If viewed from the notary's responsibility which is valid for life, a retired Notary who should be able to enjoy his old age calmly and without heavy thoughts will always be overshadowed by anxiety and restlessness for the rest of his life. Because at any time he may have to be summoned by investigators as a witness or even a suspect in connection with the deed he made. This is of course very contrary to human values that distinguish humans from other creatures. Humanity requires every individual to be able to behave and treat other human beings humanely. By humanizing humans, a person is able to maintain his human dignity (Darmodiharjo et al., 1995).

Seeing that it is not possible to apply a Notary's responsibilities that are valid for life or which are limited to the entire term of office, the last alternative in limiting the Notary's responsibilities to the deed he made can be based on the expiration provisions in both criminal and civil prosecutions. In the provisions of Article 1946 of the Civil Code it is stated "Passing time/Expiration is a legal means to obtain something or a reason to be released from an engagement with the passage of a certain time and with the fulfillment of conditions specified in the Act" (Wijono, 2007).

If it is related to the Notary's responsibility for the deed he made, this provision implies that starting from the time the Notary deed is made plus a period of thirty years, an appellant who gives

information to the Notary so that an authentic deed is made, can file a lawsuit against the Notary who confirms his statement. Into the authentic deed if there is a problem with the deed. After thirty years have passed since the notaries deed was made, the right to sue the appeared will automatically be removed along with the expiration of expiry date in a civil prosecution.

In a situation where there is a claim by the aggrieved party to a Notary who has died as a result of the deed he made, in which the claim has not passed the expiration date in civil law and as long as the claim has permanent legal force, the obligation to compensate for the loss suffered by one of the parties facing can be transferred to their heirs. This is based on the concept of inheritance where according to J. Satrio it is stated that: 288Inheritance is wealth in the form of a complex of assets and liabilities of the testator which is transferred to the heirs (Sumaryono, 2007).

The criminal law also regulates the provisions on expiration. Expiration in criminal law is one of the reasons for the abolition of authority to prosecute and carry out sentences. Usually a criminal prosecution against a Notary is related to the falsification of a letter. In the provisions of Article 264 paragraph 1 of the Criminal Code, it is stated that the crime of forging letters is punishable by imprisonment for a maximum of eight years, if committed against an authentic deed (Sumaryono, 2014).

To determine the expiration date of a criminal prosecution in relation to forgery by a Notary, this must be based on the provisions of Article 78 paragraph (1) of the Criminal Code which stipulates that the right to prosecute criminally will expire after a certain time limit has passed, namely (Tobing, 2009)

- a) For all types of offenses and crimes committed by printing, the expiration date is after one year.
- b) For criminal acts that are punishable by a fine, imprisonment for a maximum of three years, the expiration date is after six years.
- c) For criminal offenses that are punishable by imprisonment for more than three years, the expiration date is after twelve years and
- d) For criminal offenses which are punishable by death penalty or life imprisonment or imprisonment for a maximum of twenty years, the expiration date is after eighteen years.

In accordance with the explanation of the article above, that forgery of a letter is a criminal offense whose penalty is more than three years so that the expiration date for criminal prosecution is twelve years. For a Notary who has died but the expiration date of his criminal prosecution has not yet expired, then the criminal responsibility cannot be imposed on the person who has died. This is based on the provisions of Article 83 of the Criminal Code which states that the authority to carry out a criminal offense is nullified if the convict dies.

Viewed from the perspective of legal protection theory, by limiting the liability of a Notary to the deed he made based on the expiration date of prosecution, it will ensure legal certainty regarding how long a Notary must be responsible for the deed he made. In this way, the Notary's sense of justice is not harmed because the limitation of responsibility is very beneficial for the realization of security and tranquility of the Notary's life in his retirement.

Thus, if a Notary does things that are prohibited as mentioned above, it can be said that he has neglected his duties and position as a Notary. Determination of the Expiration Limit of Notary's Liability for the Deed He Made Judging from the provisions of Article 65 of the Law on the position of a Notary, a change in the position of a Notary is a mandate given by the state

### **Reconstruction of Notary Accountability for Authentic Deeds Made Based on Justice Values**

As in the provisions of article 8 paragraph 1 UUJN that the authority of a notary does not last a lifetime so that in this provision there is a limitation of authority through honorable or

dishonorable dismissal. However, the problem is that this limitation of authority is not followed by provisions regarding the limitation of Notary's responsibilities Table 1

<b>Table 1</b>			
<b>BASED ON THE DESCRIPTION ABOVE, THE RECONSTRUCTION OF THE NOTARY'S RESPONSIBILITY FOR THE AUTHENTIC DEED MADE BASED ON THE VALUE OF JUSTICE IS AS FOLLOWS</b>			
<b>No</b>	<b>Before reconstruction</b>	<b>Weakness</b>	<b>Reconstruction</b>
1.	<p style="text-align: center;">Article 65 UU JN Notary, Substitute Notary, Special Substitute Notary, and Official</p> <p>While the Notary is responsible for every deed made even though the Notary Protocol has been submitted or transferred to the depositary of the Notary Protocol.</p>	<p>The provisions in Article 65 of the UUJN that do not explain the time limit for the liability of a Notary who has stopped serving creates unclear legal implications in explaining the time limit for a Notary's responsibility for the deeds that have been made.</p> <p>As a result, the Notary Officer is still being held accountable for the deed he made.</p> <p>Associated with problems related to the time limit of the Notary's werda's accountability</p>	<p>Article 65 of the JN Law</p> <p>The Problem</p> <p>There is a limitation on this authority that is not followed</p> <p>With the provisions regarding the limitation of the Notary's responsibilities. Please consider</p> <p>Because it is contrary to human rights, considering the paragraph IV of the Preamble to the 1945 Constitution concerning the protection of every human being towards justice.</p>
2.	<p style="text-align: center;">Article 84 of Law No. 30 of 2004 reads: Actions</p> <p>Violation committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 5, or Article 52 which results in a deed only having the power of proof as a deed under the hand or a deed being null and void by law can be a reason for the party suffering losses to demand reimbursement of costs, compensation, and interest to the Notary.</p>	<p>There is no provision for criminal sanctions for Notaries who intentionally violate</p>	<p style="text-align: center;">Article 84</p> <p>Law No. 30 of 2004 reads as before it was reconstructed, added: Notary. can be punished if he intentionally violates the making of the deed.</p>
3.	<p>Article 85</p> <p>Violation of the provisions as referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16</p>	<p>No criminal sanctions</p>	<p style="text-align: center;">Article 85</p> <p>Law No. 30 of 2004 added that it can be punished if the Notary deliberately violates.</p>

	<p>paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63, may be subject to sanctions in the form of:</p> <ol style="list-style-type: none"> <li>a. verbal reprimand;</li> <li>b. written warning;</li> <li>c. Temporary suspension;</li> <li>d. Dismissal with honor; or</li> <li>e. Disrespectful dismissal</li> </ol>		
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In the provisions of Article 65 of the Law on Notary Positions, there is a change that states that the Notary must be responsible for every deed he has made even though the Notary protocol has been submitted or transferred to another Notary. This provision provides a ambiguous understanding because the clause in the article does not explicitly state how long a Notary must be responsible for the deed he has made. This ambiguity of the editorial of article 65 will certainly lead to multiple interpretations. A notary who has been honorably discharged for the rest of his life will always be overshadowed by the punishment that can be imposed on him at any time.

Although at the time of making the deed, the Notary has carried out in accordance with the procedures determined by the Act, but there are many possibilities that can result in the Notary being entangled in legal issues which are not his fault. Liability without time limit has robbed the rights of a Notary who has respectfully resigned to obtain legal protection guarantees after releasing his position. Viewed from the perspective of legal certainty theory, there is no clear limitation regarding the responsibilities of a Notary in Article 65 of the Amendment Notary Position Act, it can be interpreted that the Amended Notary Position Law has not been able to provide a clear and general understanding to Notaries so that this will lead to a multi-faceted understanding, interpretations that confuse the notaries who have respectfully quit.

This confusion will certainly create a feeling of unease and insecurity for a Notary who has retired from carrying out his duties. Whereas the purpose of the law should be to provide guarantees of protection and legal certainty that give birth to generally applicable rules in order to create a safe and peaceful atmosphere. The provisions of Article 65 of the law on the position of a notary change is an unusual provision in Indonesia because in Indonesia there is no known absolute responsibility without a time limit. This means that there is no position in Indonesia with unlimited responsibilities.

## CONCLUSION

- 1) The principle of notary responsibility used is accountability based on errors. The notary can be held accountable if there is an element of error he did. Taking into account the provisions of Article 65 of the UUJN, the Notary Officer remains responsible for the deed he made. Therefore, there is confusion regarding the limits of the Notary's liability based on Article 65 of the UUJN, namely, even though all deeds made by a Notary have been submitted or transferred to the Notary's protocol custodian, even though they have stopped or are no longer serving as a Notary, they must still be responsible for the rest of their lives.
- 2) The reconstruction carried out so that the Notary's accountability for the deed he made is more based on the value of justice, namely updating the articles in the UUJN which are not yet clear to protect the Notary in making authentic and the Notary still has to be responsible without an unlimited time limit if an error occurs in the deed made at that time, then reconstruction is considered important to obtain a basis for justice.

## SUGGESTION

- 1) It is necessary to make arrangements regarding the accountability of the Notary Officer to the deed he made by taking into account the provisions of other laws and regulations, so as to provide legal certainty for the Notary Officer.
- 2) In the event that the provisions of the Notary's responsibility for the deed he made, it is necessary to make special provisions regarding legal protection to the Notary Officer in terms of liability for the deed he made while still holding the Notary position.
- 3) In connection with the provisions of Article 63 paragraph (5) of the UUJN that the protocol of a Notary who is 25 years old or older is submitted to the MPD, the responsibility of the Notary to the deed that has been submitted to the MPD should be under the protection of MPD.

In this case, the MPD provides protection for Notaries, especially Notaries, because the deed that has been made has been submitted to the MPD. Therefore, it still needs to be studied in depth and even has to be reconstructed, because it involves various provisions and related laws and regulations.

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