



Received: 08-04-2024
Accepted: 18-05-2024

ISSN: 2583-049X

Notary's Responsibility for the Minutes of the General Meeting of Shareholders which were Prepared without the approval of the Board of Directors

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Abstract

The purpose of this investigation is to determine the liability of the notary for minutes of general meetings drafted by the notary without the consent of the board of directors. Notaries are obliged to comply with the provisions of notarial law when performing their duties of drafting documents. Notaries are obliged to be honest, impartial, thorough and independent when handling documents involving legal acts, and to protect the interests of the parties involved. This is consistent with Article 16(1) (a) UUJN.

Therefore, notaries, in the performance of their professional duties, are obliged to act with care, thoroughness and accuracy in accordance with the procedures established by current regulations when drafting a document which will subsequently become a certified document. However, there is a notary in Decision No. 1 who does not meet the requirements of this article, that is, a notary who carries out the GMS agenda without the consent of the board of directors.

Keywords: Notary, Minutes, General Meeting of Shareholders

Introduction

Law is an integral part of human social life, so society always has a legal system, and every society has legal norms (*ubi societas ibi ius*). What Cicero meant was that the legal system must involve respect for and protection of human dignity. The purpose of law is to maintain and regulate the balance between individual private interests or desires and common interests so that they do not conflict. The law actually exists to balance individual and collective rights. Therefore, in order for the law to function properly, it must be inherently safe and fair.¹

This shows that law enforcers (police, prosecutors, judges, notaries) are essentially defenders of truth and justice. Law enforcers must perform their duties sincerely and sincerely in order to make the legal profession a glorious and noble profession (*officium*).²

Likewise, the profession of notary public requires personal and social responsibility, in particular the observance of positive legal norms and the willingness to adhere to professional ethics, even compulsorily, thus reinforcing existing positive legal norms.³

A notary is a public officer authorized to notarize certified documents and has other powers under this Act or other laws. This is regulated in Article 1 No.1 of Law No.2 of 2014 Amendment to Law No.30 of 2004 concerning the Position of Notary (UUJN). Notaries play an important role in legal relations between communities because legal relations within societies require

¹ Rahmad Hendra, Jurnal Ilmu Hukum "Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru" *Jurnal Hukum*, Volume 3 Nomor 1 (2012).

² Theo Huijbers, *Filsafat Hukum*, Yogyakarta: Kanisius, 1990, hlm. 145.

³ Liliana Tedjosaputro, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, Yogyakarta: PT. Bayu Indra Grafika, 1995, hlm. 4.

documentary evidence, i.e. authentic documents. The role of the Notary is to be a public official, providing services to the community and giving him the opportunity to develop his powers and work in the field of the most effective use and use of information and communications technology and to use it responsibly to make the best use of the community service provided.⁴

If you look at the UUJN, it can be said that the duties and work of a Notary are very closely related to the Notary's responsibilities. This is because a Notary, in addition to his job of making authentic deeds, is also charged with the Notary's responsibility for carrying out branding and legalizing⁵ a deed or registering and ratifying documents/deeds made privately by the parties.⁶

In accordance with his authority, a Notary has the authority to make authentic deeds as regulated in Article 15 (1), (2) and (3) UUJN. When carrying out his duties in making an authentic deed, a Notary is obliged to carry out the provisions in the UUJN. Notaries are required to act honestly, thoroughly, independently, impartially, and safeguard the interests of parties involved in legal actions, in accordance with Article 16 (1) letter a UUJN which explains "in carrying out their office, Notaries are obliged to act honestly, thoroughly, independently, impartiality and safeguard the interests of parties involved in legal actions." Therefore, the Notary must act carefully and carefully and meticulously in carrying out the procedures for making an authentic deed.

If a Notary, either intentionally or unintentionally, through his negligence commits an act while serving as an official who makes an authentic deed, then if this mistake has resulted in other people (as a result of the deed being made) suffering losses, it means that the Notary has committed an act that violates the law. If a mistake made by the Notary can be proven, and the loss is clearly a result of making an authentic deed, then in accordance with applicable regulations the Notary can be subject to sanctions. This is as stated in Article 84 UUJN which stipulates that "Losses experienced by another party can be a reason for the party suffering the loss to demand compensation for compensation, costs and interest from the Notary."⁷

Compensation for unlawful acts in civil law is regulated in Article 1365 KUHPerdata, which explains "Every unlawful act that brings loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss". If you pay attention to the provisions of Article 1365 KUHPerdata above, it contains elements, namely acts that violate the law, namely that there must be an error, there must be a loss caused and there must be a causal relationship between the act and the loss.

⁴ Benny, "Penetapan Konsep Cyber Notary di Indonesia ditinjau dari Undang-Undang Nomor 2 Tahun 2014", *Premise Law Jurnal*, Vol 5, (2015), hlm. 15.

⁵ Safrina Y. Y., Azhari, Suhaimi. "Notary's responsibilities for privately made deed signed before and attested". *International Journal of Law*, Volume 10, Issue 2, 2024, Pages 62-65.

⁶ Rahmad Hendra, *Op.cit*, hlm. 56.

⁷ Kunni Afifah, "Tanggung Jawab Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta yang dibuatnya", *Jurnal Magister Kenotariatan*, fakultas Hukum Univeristas Islam Indonesia, No.1, vol 2, Januari, (2017), hlm. 154-155.

The Company is a form of business that has legal entity status in Indonesia. This form of business is most widely used in the business world in Indonesia because the Company has characteristics or characteristics that are different from other forms of business. This form of business is able to provide benefits to the business actors themselves as a capital association to seek profit or profits.⁸ Rules regarding Companies are regulated in Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT). "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, is a business activity with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations" this is regulated in Article 1 No. 1 UUPT".

In the Company there are important organs within which the PT organs are regulated in Article 1 No. 2 of the Company Law which states "The company organs are the GMS, Directors and Commissioners".

There are several views that regulate the relationship between organs within the Company, namely:⁹

1. The three institutions of the GMS, Commissioners /members, and directors have different positions;
2. GMS as the highest authority;
3. If commissioners/members and directors have power, such power comes from the authorization given to the members and directors by the GMS;
4. This means that GMS can revoke the authorization granted at any time;
5. Since the highest power center is the shareholders (GMS), for the board of directors, the interests of shareholders are the top priority of the company's operations.

A GMS drafted in the form of a notarial deed is a relational contract. The Notary attended the GMS and then recorded what he witnessed at the meeting in the Deed of Agreement drawn up by him in accordance with Article 90(2) UUPT read together with Article 46(1) UUPT, Notary: Presiding the signature of the person or meeting participant is not mandatory as long as the reason for not signing the document is listed in the document.

The Notary is present to witness the decisions made by the shareholders and then writes them down in the Deed of Minutes of the GMS. It is the Notary who must guarantee that the matters contained in the deed are in accordance with the facts witnessed.¹⁰

However, sometimes at the end of the year the need arises to hold an annual GMS and in addition to that an Extraordinary GMS is also needed. In this case, it is customary practice to be held in two stages, namely first the annual GMS is held, then after it ends the meeting is closed. Then another new meeting was opened with the Extraordinary GMS.¹¹

Based on the words of Article 79 (1) and (2) of the UUPA above, it is clear that every GMS agenda must be held by the

⁸ Ahmad Yani dan Gunawan Widjaya, *Perseroan Terbatas*, Jakarta: PT Raja Grafindo Persada, 2003, hlm. 1.

⁹ *Ibid*, hlm.23-24

¹⁰ Habib Adjie, *Hukum Notaris Indonesia*, Bandung: Refika Aditama, 2018, hlm. 124.

¹¹ Rudhi Prasetya, *Teori dan Praktek Perseroan Terbatas*, Jakarta: Sinar Grafika, 2011, hlm. 60.

Board of Directors, but in practice there are Notaries who ignore this, namely Notaries who create a GMS without approval from the Board of Directors, which is an action that occurs in decision No. 1/pdt.G/2020/PN.Bna. The plaintiff, on behalf of Zaharuddin as Director of the HUMAIRAH TRADING Company, filed a lawsuit against 2 defendants, and 2 co-defendants.

Research Method

Based on the words of Article 79 (1) and (2) of the UUPA above, it is clear that every GMS agenda must be held by the Board of Directors, but in practice there are Notaries who ignore this, namely Notaries who create a GMS without approval from the Board of Directors, which is an action that occurs in decision No. 1/pdt.G/2020/PN.Bna. The plaintiff, on behalf of Zaharuddin as Director of the HUMAIRAH TRADING Company, filed a lawsuit against 2 defendants, and 2 co-defendants.

The approach is a method that involves the study of library materials as secondary data, the researcher focuses on discussing the results of this research, referring to theoretical basics obtained from various literary sources such as textbooks, legal journals, archives or legal publication documents.¹²

The main research approach used is the case approach. In using this approach, researchers must collect information about the case to be analyzed, including paying attention to related facts, applicable law, and decisions that have been issued by the court. After that, researchers can analyze the case using a normative juridical approach, namely by referring to applicable legal principles, as well as reviewing various legal regulations related to the case. Thus, the case approach can be an effective method for understanding and resolving normative legal problems that occur in society. Meanwhile, the legislative approach is an approach taken by examining all existing laws and regulations in Indonesia in relation to the duties of the Indonesian state which protects its citizens in accordance with the provisions of the UUD 1945, which in this case is related to the issues raised by the author.¹³

In answering research problems, the author uses various main materials, namely Case Decision No. 1/Pdt.G/2020/PN.Bna, as well as several statutory regulations that are directly related to this research.

After the data is collected, processing and analysis is then carried out using qualitative analysis methods in accordance with applicable regulations.¹⁴ Qualitative analysis is data processing by going through stages of data collection, classifying, connecting with existing theories and problems. Then draw conclusions to determine the answer to the problem. This analysis is a step towards all the data that the researcher has obtained and by maintaining the legal basis relating to the problem under study.¹⁵

Results and Discussion

Case No. 1/Pdt.G/2020/PN.Bna is a decision where there was impropriety committed by a Notary regarding the

preparation of Minutes of Minutes of the GMS which violated legal norms and also the Notary's code of ethics, which was the action of the Notary. Explained in Article 4 point 4 which explains that a Notary must "Behave honestly, independently, impartially, trustworthy, thorough, full of responsibility based on statutory regulations and the contents of the Notary's oath of office". The mistake made by the Notary who was domiciled in Banda Aceh was that the Defendant participated in an unlawful act.

Acts against the law (*Onrechmatige daad*) are regulated in Article 1365 KUHPperdata. Article 1365 KUHPperdata explains that unlawful acts are defined as actions that harm other people and require the perpetrator who is responsible for the loss to compensate them.

Acts against the law related to the notary profession (*Onrechmatige daad*) can be considered as a Notary who, in carrying out his or her duties, intentionally commits an act that is detrimental to one or both parties involved in making a deed, if for example, the Notary's actions are found to violate the law. Notaries can be held accountable based on Article 1365 KUHPperdata. Likewise, vice versa, if a notary also provides notarial services or makes deeds to the public or people who need his services, then for example the deed contains clauses that are contrary to the law, causing losses to other people. Even though the parties present are completely unaware of it, if the Notary concerned remains passive or silent, they could be bound by Article 1365 KUHPperdata.¹⁶

This article stipulates that an unlawful act requires the perpetrator to bear responsibility for losses if the loss is caused by the perpetrator's fault. Article 1365 explains that "Every unlawful act that brings harm to another person, requires the person whose fault it was to cause the loss, to compensate for the loss." Meanwhile, the provisions of article 1366 KUHPperdata state "Every person is responsible not only for losses caused by his actions, but also for losses caused by his negligence or lack of care." Article 1365 KUHPperdata names losses resulting from unlawful acts as Scade or simply loss.

The provisions of article 1365 mentioned above regulate liability resulting from unlawful acts, whether by doing or not doing. Meanwhile, Article 1366 KUHPperdata focuses more on claims for liability resulting from errors due to negligence. Based on the 1919 Hoge Raad decision, what is defined as against the law is:¹⁷

1. Violates other people's rights, such as personal rights (body integrity, freedom, honor, etc.) and absolute rights (property rights, business names, etc.);
2. Contrary to the perpetrator's legal obligations;
3. Contrary to morality, that is, actions carried out by someone are contrary to the manners that live and grow in society;
4. Contrary to the rigor that must be respected in society.

The duties of a notary cannot be separated from the duties and powers of the persons to whom he is entrusted. The notary is responsible for the formal and substantive accuracy of the documents he drafts if it is proven in court that the notary acted intentionally or negligently to the detriment of

¹² Roney Hanitjo Soemitro, *Metode Penelitian Hukum dan Jurimeri*, Bogor: Ghalia Indonesia, 2018, hlm. 9.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2019, hlm. 133.

¹⁴ Roney Hanitjo Soemitro, *Op.cit*, hlm. 59

¹⁵ *Ibid*, hlm. 64.

¹⁶ Agnes M. Toar, *Kursus Hukum Perikatan tentang Perbuatan Melawan Hukum*, Yogyakarta: 1987, hlm. 17.

¹⁷ Salim H.S, *Pengantar Hukum Perdata Tertulis*, Jakarta: Sinar Grafika, 2006, hlm.170

the party.¹⁸ In other words, a document notarized before a notary can be declared invalid in a court decision, causing the document holder to feel victimized by the document and the notary must therefore be held liable for his error. As far as liability for acts done during his or her term of office is concerned, a notary remains liable for all such acts until his or her retirement.¹⁹

The actions carried out by the Notary in the decision in case No. 1/Pdt.G/2020/PN.Bna were very detrimental to the Directors of PT. HT, which from the start of the agenda for the GMS, the Board of Directors of PT. HT does not want the GMS to be held and has said that what the Defendants and co-Defendants have done is an unlawful act and the Defendants and co-Defendants are not allowed to hold the GMS.

The Notarial Deed executed by the Notary at ND was invalid and there was a procedural flaw in the mechanism for creating the GMS, which is why the Directors of PT. HT can deny the validity of the Notarial deed by proving it from 3 (three) aspects, namely the external aspect, the formal aspect and the material aspect of the Notarial deed, namely:²⁰

- a. A correct deed must fulfill the legal requirements regarding the requirements for a correct deed, so that the deed does not meet the requirements to become a deed.
- b. The formal proof aspect is the certainty that the facts or events contained in the deed are truly stated by the parties and completed by the notary concerned. Therefore, if it can be proven otherwise and the deed does not comply with the procedures for making the deed,
- c. Lastly, the evidentiary aspect relates to the material of the instrument, where the contents or materials contained in the instrument are valid evidence for the maker of the instrument or the party who obtains the rights and are valid for it. Instrument. Disclosure, unless otherwise stated, may disprove the validity of a document if it can be shown that the material is inappropriate. If at a later date it is discovered that the information or information provided by the parties is incorrect, then the responsibility will be borne by the parties themselves. The scope of a notary's responsibility includes the material truth of the deed he or she has

made. Regarding a Notary's responsibility for material truth, it can be divided.²¹

In this case the notary is not responsible and cannot be held accountable if the parties have provided incorrect information in the process of making the deed. Incorrect information submitted by these parties is the responsibility of these parties, where they are the ones guilty of providing incorrect data, so the parties themselves must be responsible. And the notary is freed from this sense of responsibility.

a. The notary is civilly responsible for the material truth of the deed

Notaries in carrying out their duties and positions can be held accountable based on the Notary's profession in carrying out their office duties. This responsibility is a logical consequence that must be asked of someone from the legal profession in carrying out their duties. This responsibility is intended as responsibility based on law. This can be understood because legally, everything done by someone who is capable of carrying out a legal act must be held accountable for him.²²

The civil liability of a Notary for the deeds he makes relates to civil matters, namely regarding agreements made by 2 (two) or more parties. The nature and principles adopted by the law of engagement, which those who have agreed in accordance with Article 1320 of the KUHP, namely agreement, capacity, a certain matter, and lawful clauses.

The four terms of the agreement above are absolute requirements that must be fulfilled for the agreement to be valid. An agreement becomes invalid if one of these conditions is not fulfilled, then the agreement is automatically void (*nietig*). If an agreement occurs due to misguidance (*dwaling*), coercion (*dwang*) and fraud (*bedrog*) then the agreement can be requested to be annulled (*vernietig verbaar*) from the judge and if the agreement is given not freely, then one of the parties is considered incompetent to carry out the agreement. Own legal action, then the agreement is defective and therefore can be canceled by the Judge at the request of the party who has given the agreement unfreely or by a person who is not competent to make the agreement.

Of the four terms of the agreement above, the first two terms, namely regarding the agreement and skills of the parties entering into the agreement, are called subjective terms, so called because they relate to the people or legal subjects entering into the agreement. On the other hand, the next two requirements, namely those of specific facts and legal basis, are called objective requirements because they relate to the content of the agreement itself or to the subject matter of proceedings brought by the contracting parties. The first and second conditions are called subjective conditions because these conditions must be met by the legal subject. On the other hand, the third and fourth conditions are called objective conditions because these two conditions must be satisfied by the subject of the contract. Failure to meet subjective requirements will result in termination of the contract. This means that if someone asks to terminate the contract, the contract is void. On the other hand, failure

¹⁸ R.S. Notadiesorjo, *Hukum Notariat di Indonesia Suatu Penjelasan*, Jakarta: Rajawali Pers, 2010, hlm. 13.

¹⁹ I Gusti Ayu Ria Rahmawati, I Nyoman Putu Budiarta, Ni Gusti Ketut Sri Astiti, "Tanggung Jawab Notaris Terhadap Akta Otentik Yang Dibuatnya Terkait Jangka Waktu Pensiun" *Jurnal Konstruksi Hukum*, Fakultas Hukum Universitas Warmadewa, Denpasar-Bali, Vol. 1, No. 2, Oktober, (2020), hlm. 329.

²⁰ Tasskja Nofeyska Pradistya, "Tanggung Jawab Notaris Secara Hukum Perdata Dan Hukum Administrasi Administrasi Yang Lalai Karena Membuat Akta Perjanjian Yang Tidak Memenuhi Syarat Sahnya Perjanjian (Studi Putusan Pengadilan Negeri Selong Nomor 87/Pdt.G/2019/PN. Sel)", *Article 32, Indonesian Notary*, Volume 4, tanggal 6-30, (2022), hlm. 1983.

²¹ Abdul Ghofur, *Perspektif Hukum dan Etika*, Lembaga Kenotariatan Indonesia: UII Press, Yogyakarta, 2009. hlm. 34

²² Nico, *Opcit*, hlm. 84.

to meet the objective requirements renders the contract void, so that it can be assumed from the outset that the contract never existed and never existed.²³

Case Decision No. 1/Pdt.G/2020/PN.Bna there was a legal event that did not fulfill the conditions for the validity of the agreement, namely agreement, this was because the Directors of PT.HT did not want a GMS to be held at that time, so the Directors of PT. HT issued a warning to the Defendant and joined the Defendant not to schedule the GMS. So the ND Notary must be civilly responsible, in this provision the deed made by the ND Notary must be cancelled, because the ND Notary and the other defendants have committed an unlawful act by deliberately wanting to change the articles of association of PT. HT and Defendant 1 and Defendant 2 in this case wanted to become Commissioners of PT.HT, even though in the Articles of Association of PT.HT it was clear that changes could not be made at the time the Minutes of Minutes were prepared.

Regarding this cancellation also by the panel of judges, it can be seen in the judge's considerations which explain:

Considering, that regarding the Plaintiff's petitum point 3, the Panel considers the following, because the Defendants held the General Meeting of Shareholders of PT. Humairah Trading on 1 October 2019 at the Ayani Penayong Hotel Banda Aceh and from the results of the meeting a Deed of Minutes of the General Meeting of Shareholders of PT was drawn up. HT by the Defendant with number 01 dated 01 October 2019, even though previously the Plaintiff had submitted his objection to Defendant I and Defendant II. And after the publication of the Deed of Minutes of the Extraordinary General Meeting of Shareholders of PT. HT number 01 dated 01 October 2019, the Plaintiff also went to Defendant III to express his objection, because of this the actions of Defendant III who had issued the Deed of Minutes of the Extraordinary General Meeting of Shareholders of PT. H Number 01 dated 01 October 2019 is an unlawful act.

Considering, that regarding the Plaintiff's petitum number 4, the Panel considers as follows that based on Article 79 (1), (2), and Law no. 40 of 2007 concerning Limited Liability Companies and as a result of the issuance of the Deed of Minutes of the Extraordinary General Meeting of Shareholders of PT.HT number 01 dated 01 October 2019 by Defendant III, the Plaintiff was greatly disadvantaged and this resulted in the Plaintiff's inconvenience in carrying out business within the company PT. Humariah Trading will be disturbed and the public may no longer trust the Plaintiff, therefore the Tribunal declares that the Deed of Minutes of the Extraordinary General Meeting of Shareholders of PT.HT No. 01 dated October 1 2019 is declared to have no legal force and is void from the start, therefore the Plaintiff's petitum number 4 can be granted.

b. Notary's responsibility for a deed that contains material truth

According to KEN and UUJN, notaries in making a deed or carrying out their daily duties and positions serving the public who need notary services, must prioritize morals and

ideals as stated in KEN and UUJN. There are 4 important points of view related to the attitudes and behavior of Notaries in dealing with the public who use notary services, namely: Having moral integrity, being honest with clients and themselves, and being aware of the scope of their duties and authority and not solely serving the public based on money or because of certain interests.²⁴

Moral responsibility becomes a legal responsibility if the values that live in society are raised and stated in statutory regulations. Guided by this, moral responsibility which then becomes legal responsibility is responsibility in the form or according to law, especially the law concerning the Office of Notaries. Legal responsibility is a responsibility that falls on officers to be able to carry out their duties without violating legal regulations. There is also a form of legal accountability in the form of sanctions, namely the legal signs in question are UUJN.²⁵

In addition, Article 16 (1) a of the UUJN stipulates that notaries must be honest, truthful, thorough, independent and impartial in performing their duties and protect the interests of parties to legal disputes.

Therefore, all of the above describes the professional ethics and responsibilities expected or expected of a notary. The Notary, as a public official, in the exercise of his duties and office, has the authority to certify all certified documents of actions, agreements and decisions, because laws and regulations require it and/or interested parties wish to make or include such documents Become in the authentic document. In addition, notaries are authorized to store documents, ensure documents are submitted on time, and provide total documents, cost estimates, and copies of documents. Ultimately, authentic documents should provide perfect proof and provide legal certainty and legal force. The purpose of legal force here is that it can provide legal certainty and legal protection for the parties involved in it.

Likewise, in UUJN provisions, before carrying out their office, a Notary must be sworn in by taking an oath of office, in which the oath is stated:

- a. In pledging his allegiance and fidelity to the Republic of Indonesia, Pancasila, the UUD 1945, the Law on Notary Positions, and all other applicable laws and regulations.
- b. Notaris is expected that he will execute his duties with integrity, sincerity, diligence, autonomy, and fairness.
- c. The Notary pledges to uphold the professional code of ethics, demonstrating integrity, proper conduct, and a sense of responsibility. This includes honoring the principles of dignity and maintaining a high level of accountability.
- d. Additionally, the Notary is committed to safeguarding the confidentiality of deeds and any information acquired during the performance of their duties.
- e. The appointment of the individual in question, whether directly or indirectly, has always been and will continue to be free from any form of bribery or promises.

The actions undertaken by Notary ND have undoubtedly caused significant harm to the Directors of PT. HT, leading

²³ Tassjka Nafeyska Pradistya, "Tanggung Jawan Notaris Secara Hukum Perdata dan Hukum Administrasi yang Lalai Karena Membuat Akta Perjanjian yang Tidak Memenuhi Syarat Sahnya Perjanjian (Suatu Putusan Pengadilan Negeri Selong nomor 87/Pdt.G/2019/PN.Sel)", *Indonesian Notary*, Article 32, Volume 4, (2022), hlm. 1682.

²⁴ Nomensen Sinamo, *Filsafat Hukum, Dilengkapi Dengan Materi Etika Profesi Hukum*, Jakarta: PT. Permata Aksara, 2014, hlm. 126.

²⁵ Cipto Soenaryo, "Peran Dan Tanggung Jawab Notaris dalam Pelayanan kepada Publik Sesuai dengan Moral Etika Profesi dan Undang-Undang", *Article*, USU, 2022, hlm. 14.

to financial losses for the Plaintiff. Consequently, it is imperative that Notaries face appropriate sanctions in accordance with the UUJN.

Based on the explanation, it has been clearly explained that in carrying out his office, a Notary must comply with the Law on Notary Positions as regulated. However, in this case, Notary ND was not honest, because Notary ND said that the Plaintiff, who was the Director of PT.HT, had wanted the GMS to be held, but it turned out in the evidence at the trial that Notary ND had lied regarding the plaintiff who came to him, because in reality the Plaintiff was the same. never came to meet the ND Notary and apart from that, Defendant 1 and Defendant II met the ND Notary and ordered the ND Notary to carry out the agenda for the GMS with legal consequences that would be borne by Defendant 1 and also Defendant II, and the ND Notary was aware agreed to the wishes of the Defendants.

The actions carried out by Notary ND were certainly very detrimental to the Directors of PT. HT, this will result in losses for the Plaintiff. In this case, Notaries must be subject to sanctions as regulated in the UUJN. Article 16 (11) UUJN explains that Notaries who violate the provisions as intended in paragraph (1) letters a to l can be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension;
- c. Respectfully terminated; or
- d. Dismissed dishonourably.

c. Notary responsibilities are based on the KEN

As is known, notaries have and are members of the Indonesian Notary Association (INI). Therefore, the Notary Code of Ethics, which contains good moral rules, has been established by the INI Association based on congressional decisions or applicable laws and regulations, so that all notaries in Indonesia as members of the INI Association must follow and adhere to it. The KEN, which is obligatory for individuals in the role of substitute notaries and temporary notary officials, is also followed by the KEN, also known as substitute notaries and temporary notary officials. It is only logical that notaries adhere to the KEN due to the nature of their work. When notaries, substitute notaries, and temporary notary officials are entrusted with their duties as public servants, it is imperative that they strictly abide not only by legal regulations, but also by their professional code of ethics, the KEN. This code of ethics holds great significance as it upholds the honor and integrity associated with the profession of a notary. Consequently, any violations committed by notaries can be classified as breaches of the Professional Code of Ethics and violations of the UUJN. Meanwhile, responsibility is in the form of compensation, criminal sanctions (imprisonment and/or fines, or administrative dismissal from office).²⁶

The significance of the KEN in conjunction with the UUJN (Law on Notary Services) is instrumental in defining the essence of the notary profession itself. Both the UUJN and the KEN stipulate that notaries, as public officials, are not only required to adhere to the UUJN, but also to abide by the professional code of ethics and fulfill their responsibilities to the community, the professional

organization (INI), and the state. This interconnection means that notaries who disregard the integrity and prestige of their position may face moral consequences, including reprimands, expulsion from their professional association, and even removal from their role as a notary.²⁷

Notaries, as public officials, adhere to Pancasila and demonstrate a strong commitment to upholding the law. They possess exemplary character and maintain the honor and dignity of their profession. (Article 1 of the KEN). The KEN, specifically Article 2, emphasizes the importance of notaries carrying out their duties independently, honestly, and impartially, while also taking full responsibility for their actions. Notaries are prohibited from having branch offices or using intermediaries and promotional mass media. Their primary focus should be on providing the best possible services to those in need, offering legal advice, and providing free assistance to the underprivileged. Article 3 of the KEN emphasizes the need for mutual respect among notaries and discourages unhealthy competition, as it is crucial to maintain the integrity of the notarial profession. The ethical responsibility of a notary is related to moral norms which are a measure for notaries to determine whether the actions they carry out their profession are right or wrong or good or bad. There are 3 things that cover this responsibility:

1. **First**, when an action is carried out with full awareness without external influence, whether physical or mental, where the mind normally functions well.
2. **Second**, with free will a Notary commits the violation, where he can consider whether or not to commit the violation in question.
3. **Third**, there is an element of intent with malicious intent carried out by the Notary and as a result it causes losses to other parties.²⁸

Considering that sanctions are a form of KEN enforcement effort for violations of the Code of Ethics, what is meant by sanctions is punishment which is intended as a means, effort and instrument to enforce Notary obedience and discipline. KEN Clause 6 explains the sanctions that can be imposed on Members who violate this Code of Ethics. These sanctions are in the form of a reprimand, reprimand, suspension of club membership, permanent expulsion from club membership, and dishonorable expulsion from club membership.

The authority to supervise the implementation and enforcement of the KEN rests with the DK which is tiered starting from the regional, regional and central levels. For Notaries who violate the Code of Ethics, the DK has the authority to collaborate with the DP in investigating the violation and imposing sanctions on Notaries who violate the Code of Ethics. Sanctions against INI members are implemented in accordance with the provisions of Article 6(1) KEN, including in the form of censure, warning, temporary suspension of Association membership, permanent expulsion from Association membership, and dishonorable expulsion from Association membership.

²⁷ Ineke Bombing, "Pengawasan Terhadap Pejabat Notaris dalam Pelanggaran Kode etik", *Lex Privatum*, Vol. III/No. 2/Apr-Jun, 2015, hlm.108.

²⁸ Ineke Bombing, "Pengawasan Terhadap Pejabat Notaris dalam Pelanggaran Kode Etik", *Lex Privatum*, Vol. III, No.2, Apr-Jun (2015), hlm.108-109.

²⁶ <https://www.hukumonline.com/klinik/a/mengenal-profesi-notaris-dan-kode-etiknya-lt632d70d53e11f> (diakses pada hari Selasa, tanggal 27 Februari 2024, pukul 12.00 WIB)

Conclusion

Additionally, notaries bear civil responsibility for ensuring the accuracy of the minutes of the GMS and the deeds they create, the Notary's responsibility based on the UUJN for the material truth of the deed he has made, and the Notary's responsibility for carrying out his office duties are based on the KEN. The Judge's Decision in Deciding Case No. 1/Pdt.G/2020/Pn.Bna Fulfills the Principles of Justice, Benefit and Legal Certainty. Decision No.1/Pdt.G/2020/Pn.Bna fulfills the principles of justice and legal certainty but does not fulfill the principle of legal benefit.

Suggestions

The suggestion in writing this thesis regarding this problem is that UUJN and the KEN should be used so that Notaries can carry out their duties and obligations as they should, and not make mistakes that can harm the Notary and the public, so that in carrying out their duties and authority the Notary can be responsible, or with a full sense of responsibility.²⁹ Meanwhile, for judges in deciding a case, the judge should also consider various principles in the judge's decision, including the principle of legal benefit, so that there is a balance between the principle of legal compliance, the principle of justice and the principle of expediency, so that the judge's decision can be a decision that is beneficial for everyone.

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²⁹ Wirantia, Darmawan, Suhaimi, PPA's Legal Responsibility for the Creation of Empty Deed, *Syiah Kuala Law Journal*, Volume 4(3), 2020, pp.351-368.