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Notary's Responsibility for Loss of Deed Minutes

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Abstract

Law regulating the position of Notary (often called UUJN) No.30 of 2004 and has been amended by Law No.2 of 2014. Article 16 (1) UUJN establishes the obligation of the notary to prepare the instrument in the form of a clerical record and to preserve it as part of the notarial record in the event that the notary fails or fails to perform his duties. Letter b UUJN may be classified as an unlawful act (PMH) if a notary acted negligently while preserving and storing deed records in accordance with Article 16 (1) UUJN. Article 65 of the UUJN also states that notaries, provisional notaries and

substitute notaries are responsible for every document they create. However, there are currently no regulations that clearly regulate the filing of notarized documents. Therefore, there is no uniform procedure for notaries in carrying out their duty to preserve documentary records as state archives. When storing all notarization agreements, traditional paper media are still used and saved manually. Based on the explanation above, the author is interested in researching and digging deeper into the loss of deed minutes caused by notary negligence and errors.

Keywords: Notary Responsibilities, Minutes of Deed

Introduction

In general, every legal certainty and protection requires the existence of evidence so that every human's rights and obligations as legal subjects can be known with certainty in social life. In relation to proof of legal obligations and certainty of the rights of each individual, one of them is played by a Notary.

Notaries who are public officials and are authorized to notarize certified documents are also vested with other powers provided for by the UUJN or other laws.¹ Article 15 divides the powers of notaries as public officials into three categories, namely, issuing public documents, authenticating private documents² and other statutory powers. The role of the notary in creating legal certainty and protection for society is more of a preventive one, or preventing legal issues from arising by controlling the notarized documents drawn up before him that relate to a person's legal status and rights and obligations. Law, etc. as evidence. If there is a dispute about relevant rights and obligations, it is best to file a lawsuit in court.³ As perfect evidence, authentic documents require no other evidence to prove them.⁴ Its purpose is to prevent legal problems from arising, as the notarial deed can provide evidence of a particular matter at a later date if one of the parties disputes it.

The purpose of requiring a notary is to provide legal certainty to the parties, that every deed made by and before a notary is in accordance and in harmony with existing legal norms, so that if one day a problem arises, the parties can always be guided by

¹ Pasal 1 ayat (1) Undang-Undang Nomor 2 Tahun 2014 perubahan atas Undang-Undang No. 30 Tahun 2004 tentang Jabatan Notaris.

² 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.

³ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggung Jawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, hlm. 7.

⁴ Rabi Bahana, M., Suhaimi, Darmawan, The role of notaries in the application of know your service user (PMPJ) principles as the implementation of the precautionary principle, *International Journal of Multidisciplinary Research and Growth Evaluation*, Vol.4(3), 2023, pp.,505-511,

the deed the notary.⁵ So the answer to the dispute is already in the notarial deed. If the problem goes to court, the judge must be guided by and return to what is described in the notarial deed. Notaries in carrying out their official duties must always adhere to applicable legal norms, remembering all the actions that will be taken by the notary and then applied in making the deed. Basically there are two types of deeds which are within the scope of the legal products of the notary position, namely Partij Deeds and Ambelijtjke/Relass deeds. Ambelijtjke deed or official deed is a deed made by a notary which contains everything that the notary has heard, seen and experienced to be put into a deed, for example a deed of minutes or minutes of the General Meeting of Shareholders (GMS) of a limited company. Meanwhile, a partij deed or deed of the parties is a deed made before/by a notary which is the will of the parties/parties/ so that the contents of the deed are the full responsibility of the party/party, for example a credit agreement, and etc.⁶

The notarial deed that has been made is either in the form of an ambelijtjke/relax deed or a partij deed, the deed is then signed by the parties, witnesses, and the notary himself as a form of completion of the deed which will then be binding on the parties who are part of it. From the deed. This deed is then called the Minutes of Deed.

The notarial deeds that have been made will then be kept by the notary official himself as part of the notarial protocol. This notarial protocol is then what the notary must guard and maintain as part of the archives or state documents. For every deed or minute of deed that has been made by a notary, the notary is obliged to maintain the confidentiality of the deed. The notary is only permitted to show or inform the contents of the deed to parties with an interest in the deed, namely "the parties to the deed/their heirs". In Article 54 of the Law on the Position of Notaries, Notaries are only permitted to provide interested parties in the form of copies of deeds, extracts of deeds, or grosse deeds, they are not permitted to provide them in the form of minutes of deeds.

The absence of specific regulations governing the procedures for storing minutes in the Notary's Office Law means that notaries do not have standard procedures regarding this matter, as a result the notarial protocol in the form of deed minutes is vulnerable to damage or loss. If the state archives kept by the notary are lost or damaged, the notary is obliged to be responsible for the loss or damage to the notary's protocol.

The destruction of deed minutes can occur due to negligence in carrying out obligations or due to a lack of careful principles by the notary or his employees in storing the notarial deed. For example, deed minutes will be damaged due to dampness due to cold weather, deed minutes will be damaged due to being eaten by termites, deed minutes will be scattered during storage, or deed minutes will be destroyed due to natural disasters. As happened at the Notary's Office in Banda Aceh in the name of Dr. Arina Novizas Shebubakar, S.H., M.Kn Jl. T. Nyak Arif, Lr. Talib Ali Number 01, Syiah Kuala District, Banda Aceh City,

which was lost and destroyed by irresponsible people according to deeds from 2018 to 2020.

The problems that arise from the examples and illustrations above are because there are no clear provisions to anticipate this, which means that parties with an interest in the deed may experience losses or problems when they need a copy or quotation of the deed. On the other hand, the notary, as the party responsible for storing notarial protocols, cannot possibly issue a copy or quotation of the deed without having the minutes of the deed as a reference. If there is a gross forgery or misuse, a copy or quotation can be immediately identified easily by matching it with the original. The copy or quotation of the deed that is made must be in accordance with the minutes of the deed kept by the notary. In the process of making a copy or quotation, the notary needs the minutes of the deed first to be used as a reference for making a copy or quotation of the deed.

The absence of statutory regulations that clearly regulate how to store minutes of notarial deeds has resulted in the absence of standard procedures for notaries in carrying out their obligation to store minutes of deeds as state archives. The practice of storing all notary protocols to date still uses conventional media in the form of paper and is stored manually. Based on the explanation above, the author is interested in researching and digging deeper into the loss of deed minutes caused by notary negligence and errors.

Research Methods

Based on the problems raised, this research uses normative legal research methods, that aims to discover and formulate legal propositions through analysis of the main problem.⁷ Meanwhile, according to Soerjono Soekanto and Sri Mamuji, normative legal research, also called library legal research, is legal research carried out using library materials or secondary data.⁸

The approach method used in this research is:

1. Statutory Approach, namely the approach taken to examine statutory regulations and various legal regulations which are the focus of the research.
2. The Conceptual Approach, namely an approach that departs from the views and doctrines that have developed in legal science.

The main point of this examination is the Notary's responsibility for the loss of deed recording and legal protection for parties who request a copy of a deed whose recording of the deed has been lost.

The resource person is an interview with Notary Dr. Arina Novizas Shebubakar, S.H., M.Kn. The sources in this research aim to support secondary data that refers to the subject matter or is directed at a particular problem. This research was carried out by collecting data from the necessary sources related to the research object, which includes opinions, knowledge and suggestions from resource persons.

In research, a distinction is generally made between data obtained directly from the public (called primary data (basic

⁵ Habib Adjie, *Meneropong Khazanah Notaris dan PPAT Indonesia (Kumpulan tulisan tentang Notaris dan PPAT)*, PT. Citra Aditya Bakti, Bandung, 2009, hlm. 1851.

⁶ Mulyoto, *Perjanjian; Tehnik, cara membuat dan hukum perjanjian yang harus dikuasai*, Cakrawala Media, Yogyakarta, 2011, hlm 12.

⁷ Philipus M. Hadjon dan Tatiek Sri Djamiati, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, 2005, hlm. 3.

⁸ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali Press, Jakarta, 2009, hlm. 13-14.

data) and data obtained from library materials (often called secondary data).⁹ This research will use qualitative methods to describe the problem, namely grouping and selecting data according to the quality and authenticity of field research data, and connecting it with library research theory, conducting data analysis, and providing answers to these questions. Research question. Management of legal data is qualitative and descriptive, namely through presenting research results to obtain a comprehensive and systematic picture to be able to answer, analyze and summarize research questions.

Result and Discussion

1. Notary's Responsibility for Loss of Deed Minutes

Every person who holds or holds a certain position in any field as part of a state structure, government or organization always has certain limitations. There are limits in terms of authority, there are also limits in terms of time, meaning how long the term of office held by someone must end. The product of a position, for example a decision letter made and signed by the holder of a position, the decision letter must be in accordance with the authority possessed by that position and the decision letter will remain valid (binding) even though the official holding the position is no longer in office. From his position. Therefore, every position must have its own time limit for accountability.

A notarial deed is an official document issued by a notary based on Article 1870 of the Civil Code and HIR Article 165 (Rbg 285) which has absolute and binding evidentiary power. A notarial deed is the main written evidence or letter of evidence so that this document is trial evidence which has a very important position. The types of deeds that may be made by a notary, which determines the following:¹⁰

- a. Establishment of a Limited Liability Company (PT), amendments, and also minutes of the General Meeting of Shareholders;
- b. Establishment of foundations;
- c. Establishment of other business entities;
- d. Power to sell;
- e. Lease agreement, sale and purchase agreement;
- f. Information on inheritance rights;
- g. Will;
- h. Establishment of CV including changes;
- i. Acknowledgment of debt, credit agreement, and granting of mortgage rights;
- j. Cooperation agreement, work contract;
- k. All forms of non-exempt agreements with other officials.

The agreement for this document is the original notarized document. In this context, the term agreement refers to the original document stored in the notarized agreement. The document record also contains the original signatures, initials or fingerprints of the left hand of the document, the witness and the notary. Additionally, the deed record contains other evidence supporting the deed. This document log must be kept by the notary and given a month number and entered into the notary's document register (catalogue) and given a track number. The record of the document is part of the state archives and can also be said to be the life of the notary. The agreement contains the wishes of the

speaker or parties and has the signatures of the parties, witnesses and notary public at the end of the document. Notary protocols are dynamic archives, that is, archives that are directly used in the activity of the archive creator and stored for a certain period of time. The Archives Law also regulates the storage of state archives. Archive creators are also obliged to maintain the confidentiality of archives and are obliged to determine procedures based on minimum service standards and provide facilities for the benefit of archive users. Lumban Tobing stated that keeping deed minutes is by paying attention to a person's habit of storing and securing their money, important documents and other assets, namely in a safe.¹¹

Based on his authority, the Notary is obliged to keep the minutes of the deed he has made. The authority given will always give rise to a burden of responsibility for the person who is given the authority (including the notary) so that the person given the authority has responsibility for what he makes. "The authority of a notary in making authentic deeds has the consequence of giving birth to a very big responsibility in providing legal certainty to the public."¹²

Responsibilities towards notaries arise from the authority and obligations imposed by Notaries through UUJN and the Archives Law. This has become an ongoing problem because there is no specific regulation governing the procedures for storing minutes in the UUJN, resulting in notaries not having standard procedures regarding this matter, as a result the notarial protocol in the form of deed minutes is vulnerable to damage or loss. If the state archives kept by the notary are lost or damaged, the notary is required to be responsible for the loss or damage to the notary's protocol. There are several principles that must be used as guidelines in carrying out the duties of a Notary, namely the principles of carrying out the duties of a Notary well with substance and understanding for the interests of the Notary.¹³ These principles are the principle of legal certainty, the principle of equality, the principle of trust, the principle of prudence, and the principle of professionalism.¹⁴ The Notary has a legal obligation to keep the deed and all information used to make the deed confidential, not for the Notary's own interests, but for the interests of the parties, that the Notary is trusted by the parties to be able to keep all the information or statements of the parties that have been given before the Notary regarding the making of the deed in Notary Protocol.¹⁵

Storing Deed Minutes is part of the obligations of a Notary Officer as outlined in Article 15 (1) in conjunction with Article 16 (1) letter b UUJN. Based on the case of missing

¹¹ Lumban Tobing, *Peraturan Jabatan Notaris (Notaris Reglement)*, Erlangga, Jakarta, 1999, hlm. 328.

¹² Dewi Oktavia, "Tanggung Jawab Pemegang Protokol Notaris Terhadap Akta Yang Batal Demi Hukum", *Jurnal Recital Review*, Vol. 3, No. 1, 2021, hlm. 150.

¹³ Abdul Halim, *Op.Cit.*, hlm. 187

¹⁴ Hartanti Sulihandari dan Nisya Rifiani, *Prinsip-prinsip Dasar Profesi Notaris*, Dunia Cerdas, Jakarta, 2013, hlm.78-79

¹⁵ I Kadek Agus Satria Darma Putra, "Pertanggungjawaban Notaris Secar tanggungjawaban Notaris Secara Perdata Terhadap Pembuatan Minuta Akta Akibat P embuatan Minuta Akta Akibat Penyalahgunaan Kalahgunaan Keharasaan Minuta Akta Oleh Mantan Pakerjanya", *Jurnal Indonesian Notary*, Vol. 3, No. 2, 2021, hlm. 326

⁹ Soerjono dan Sri Mamudji, *Op. Cit.*, hlm. 12.

¹⁰ Soerjono dan Sri Mamudji, *Op. Cit.*, hlm. 12.

deed minutes from 2018-2020 which were allegedly destroyed by irresponsible people at the office of Notary Dr. Arina Novizas Shebubakar, S.H., M.Kn is considered to be negligent which causes a violation of authority and/or obligations, which will certainly result in legal sanctions for the notary. It is stated that one of the administrative sanctions that can be imposed on a notary who violates his obligations as a Notary, including in keeping the Deed Minutes, is the temporary dismissal of the notary from his position, this is in accordance with the provisions in Article 9 (1) of Law No. 2 of 2014, which stated: "Notaries are temporarily dismissed from their positions, one of which is due to violating the obligations and prohibitions of the position as well as the KEN.

Article 9 (1) letter d of Law No. 2 of 2014, indicates that there is legal responsibility in the form of administrative sanctions of temporary dismissal for notaries who violate their obligations as notary officials. When referring to the obligations contained in Article 16 (1) letter b, it is not just temporary dismissal but there are several other administrative sanctions, as described in Article 16 (1) UUJN.

Regarding legal accountability in the form of administrative sanctions in the form of verbal or written warnings, this is the authority of the Regional Supervisory Council (MPW) as stipulated in Article 73 (1) of Law No. 2 of 2014, as described in the authority of the MPW. In order to pursue the above-mentioned legal responsibilities, administrative sanctions will first be imposed on notaries who are deemed to have violated their contract recording duties. The review is initiated by the MPD, which corresponds to Article 70 of the UUJN. So that the MPD can later make recommendations to the MPW for verbal or written warning sanctions. At the same time, administrative sanctions for dismissal are handled by the responsible minister based on the recommendations of the regional supervisory board and after review by the relevant notary. In addition to the consequences or liabilities determined by the MPW or the Minister, the Notary may also be subject to civil liability. In KUH Perdata, the interpretation of the law whereby the notary is responsible for the material accuracy of the deeds he draws up is the interpretation of the unlawful Act (PMH).¹⁶

Based on this, in addition to administrative sanctions that can be given to a notary who removes the Deed Minutes, it is also possible for the notary who feels aggrieved by the loss of the Deed Minutes to file an PMH lawsuit to the District Court, in order to hold the Notary legally accountable (civilly), Law No. 2 of 2014 itself has outlined in several articles the possibility of imposing civil liability on notaries who violate their obligations as notary officials, including the prosecution of reimbursement of costs, compensation and interest to the Notary.

Specifically regarding the loss of Deed Minutes carried out by Notary Officials, there is no specific regulation either in terms of procedures for filing a lawsuit or civil sanctions. However, judging from his actions, the loss of Deed Minutes under the authority of a Notary is part of an Unlawful Act committed by the Notary concerned. As stipulated in Article 1365 KUH Perdata.

It is said that the action of a Notary who omits the Deed Minutes is a PMH which can refer to the opinion of Moegini Djodjodirdjo, who is of the opinion that one of the PMH is an act that is contrary to his own legal obligations.¹⁷ According to Moegini Djodjodirdjo's opinion, in this context it can be interpreted as an act that is contrary to one's own legal obligations as a PMH, so that keeping the Deed Minutes is an obligation of the Notary as stipulated in Article 15 (1) in conjunction with Article 16 (1) letter b Law No. 2 of 2014. So, if the Notary does not carry out his obligations in keeping the Deed Minutes or in this case loses them, he can be held liable as the party who committed the PMH. So that parties who suffer losses due to the loss of the Deed Minutes can demand compensation from the Notary.

The imposition of compensation by the Notary through demands/lawsuits from parties who feel disadvantaged is because the main concept of making a deed comes from the initiative of the parties who want to make an agreement in the form of a deed. In general, a notarial deed exists or is made due to an agreement between one party and another party who agrees on something and states that the agreement between the parties wishes to be included in a notarial deed. Based on the explanation above, if the Minutes of Deed which have been entrusted by the parties to the notary are lost, there is potential for the parties listed as presenters in the Minutes of Deed to suffer losses. This rationale is used as a guideline so that Notaries can be held civilly liable in the form of compensation if they omit the Minutes of the Deed.

The legal liability of a Notary who omits the minutes of a deed can be imposed on the Notary starting from administrative sanctions in the form of verbal, written warning, temporary dismissal, honorable or dishonorable dismissal as stated in Article 9 (1) in conjunction with Article 16 (11) of Law No. 2 of 2014, and also civil legal liability in the form of prosecution by parties who feel aggrieved by the loss of Deed Minutes in the form of reimbursement of fees, compensation and interest to the Notary in accordance with Article 1365 KUH Perdata.

2. Examination Process for Notaries Who Omit Deed Minutes

Based on Article 16 (1) letter b UUJN which regulates the obligations of Notaries to make deeds in the form of minutes of deeds and keep them as part of the Notary Protocol, then Notaries who do not fulfill or neglect their responsibilities as intended in UUJN can be considered to have violated the law. Based on Article 16 (1) letter b, the Notary is obliged to make a deed in the form of a Minutes of Deed and save it as a minutes. If a deed of minutes is lost and there are allegations of intentional destruction by an irresponsible party, then this is in direct conflict with the article mentioned above. The notary is deemed to have made a mistake by not complying with his obligations as stated in Article 16 (1) letter b above. Mistake is a translation of the word "schuld", which in a broad sense includes intention (opzet) and negligence (onachtzaamheid). Deliberation is the occurrence of a loss that was intended or even if the loss was not intended but the action was desired, while negligence is an event where a person should have known or

¹⁶ Yoefanca Halim, *et al*, "Tanggung Jawab Notaris terhadap Ketidaksesuaian Akta Salinan dengan Minuta Akta", *Jurnal Kosmik Hukum*, Vol. 20, No. 1, 2020, hlm. 38.

¹⁷ Amrizal J. Prang, "Perbuatan Melawan Hukum Oleh Penguasa", *Jurnal Transformasi Administrasi*, Vol. 03, No. 02, 2013, hlm. 582.

reasonably suspected that his or her actions could cause harm.¹⁸

From this explanation, the element of intent occurs because of the intention of the "perpetrator" to do something that could result in harm to another party (the victim). Meanwhile, in the element of negligence, the perpetrator does something that results in harm to the victim, which is done without any prior intention.

There are multiple factors contributing to the disappearance of deed minutes, and one of these factors is the careless destruction by individuals who lack responsibility. When considering the aforementioned reasons, the author concludes that according to the author, basically the Notary cannot maintain the state archives properly considering that there are several principles that are violated, such as the principle of trust, namely where the notary has given confidence to the notary to maintain the minutes deed for him but the minutes deed can be destroyed by irresponsible people. Then there is the precautionary principle which illustrates that the notary's office must have a protocol in serving people who visit the office, but in reality the notary's office can be entered by irresponsible people and can destroy minutes of deeds from 2018 to 2020 only. Has been kept in a cabinet cupboard and the location of the minute deed for a particular year should only be known by people within the office. Based on this negligence, minutes of the deed may be lost even though there are no elements to eliminate them.

Errors like this are classified as errors caused by negligence on the part of the Notary. In the context of the KUH Perdata regarding compensation, as regulated in Article 1243 and Article 1246 KUH Perdata, it contains compensation in the form of costs, losses and interest. Basically, this provision is to restore the aggrieved party in a situation if the other party had not defaulted. Losses suffered by a person can be divided into 2 parts, namely losses that befall the person and losses that befall property. Property losses can be in the form of actual losses experienced and loss of expected profits. Based on this, the losses experienced by the parties resulted from the absence of minutes of the deed which the Notary should have been able to keep, but in the end they were not there or were lost. Notarization includes property losses in the form of real losses consisting of costs incurred including the Notary's honorarium, as well as other costs arising as a result of the implementation of the agreement in the deed. Furthermore, the provisions regarding compensation in Article 1365 KUH Perdata which states that "every PMH that brings loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss. This article is the most popular article relating to PMH, namely the provisions that require people who commit unlawful acts to compensate the parties who suffer losses as a result of these unlawful acts. The responsibility to pay compensation to the party who experienced the loss can only be carried out if the person who committed the PMH is a person who is capable of taking legal responsibility (there is no excuse).

Theoretically, it is said that claims for compensation based on the reasons for violating the law can only be made if four elements are met, such as the existence of a PMH, the existence of a loss, the existence of an error, and the existence of a causal relationship between the loss and the

PMH. From the previous description of PMH and errors, a Notary who is negligent in storing and maintaining the minutes of the deed can be sued by the parties who feel aggrieved to compensate for costs, compensation and interest based on Article 84 UUJN as a result of the degradation of the authentic deed made in front of them. The notary becomes a private deed.

The negligence in question is due to lack of care in storing the minutes of the deed which resulted in the minutes of the deed being destroyed by an irresponsible person. According to the results of an interview with Mr. Dr. Suhaimi, S.H., M.Hum as the MPW of Aceh Province Notaries has become the responsibility of each notary who is negligent in storing the minutes of the deed, and can be a reason for the parties who suffer losses to demand reimbursement of costs, compensation losses and interest to the notary.¹⁹ In an effort to impose sanctions, it is necessary to report from the aggrieved parties.

In this case, an unlawful act arises as for the definition of an unlawful act in the case of Lindebaum versus Cohen. Hoge Raad has given considerations including the following:²⁰

"That by unlawful act (*onrechtmatige daad*) is defined as an act or omission, which is or is in conflict with the rights of other people, or is in conflict with the legal obligations of the perpetrator or is in conflict, either with good morals, social relations towards other people or objects, while whoever because his fault as a result of his actions has caused harm to other people, he is obliged to pay compensation."

An explanation of the provisions of Article 1365 KUH Perdata refers to losses resulting from damage, loss or destruction of deed minutes, because deed minutes have perfect evidentiary power, so that the absence of a deed minute will cause losses to the parties whose names appear in the deed and the person to whom it was given. a right resulting from the agreement.

3. Legal Protection for Parties Who Request a Copy of the Deed Due to Missing Minutes of the Deed

Copies of Deeds are regulated in Article 1 number 1 UUJN which states that: "Copies of Deeds are word for word copies of the entire Deed and at the bottom of the copy of the deed the phrase is given as "COPY" which has the same sound." Which also refers to Article 38 UUJN, the notary provides efforts to the Applicants, as stated in the phrase efforts by Peter Salim and Yenny Salim in their book that efforts are the main task that must be carried out by a person or group.²¹ The definition of this effort is related to the Notary's efforts, namely that the Notary has an obligation that must be carried out to give the Applicant the right to provide a copy of the Deed. A copy of the deed can be read or given by the Notary, if the minutes of the deed have been signed by the presenters, witnesses at least 2 of the Notary's employees or Witnesses from the Presenters who have been introduced to the Notary, and the Notary's signature and affixed with the Notary's stamp/seal as regulated in Article 56 (1) UUJN which states that: "Deeds in original, gross

¹⁹ Suhaimi, Majelis Pengawas Wilayah (MPW) Notaris Provinsi Aceh, *wawancara*, tanggal 21 Maret 2024

²⁰ Moegni Djodirdj, *Perbuatan Melawan Hukum*, cetakan.2, Pradnya Paramita, Jakarta, 1982, hlm. 25-26.

²¹ Salim Peter dan Yenny Salim, *Kamus Bahasa Indonesia Kontemporer*, Modern English Prers, Jakarta, 2002, hlm. 52.

¹⁸ *Ibid.*

deeds, copies of deeds or excerpts from deeds issued by notaries must be stamped."

The contents of the copy of the deed are guided directly by the minutes of the deed, the writing contained in the minutes of the deed has legal force, so the contents of the copy of the deed must be the same as what is written in the minutes of the deed. A copy of the deed has a limitative nature, where it can be given to people as parties or parties who have an interest in the copy of the deed, but not only to the parties, a copy of the deed can be given to heirs or people who have the right to legal actions in the minutes of the deed.²² This is regulated in Article 54 (1) UUJN.

The evidentiary power of a copy of a deed or a photocopy of a legalized copy of a deed has perfect evidentiary power which is linked to Article 1888 KUH Perdata which states that: "The power of proof in writing lies in the original deed. If the original deed exists, the copy and quotation can only be trusted as long as the copy and quotation correspond to the original which can always be ordered to be shown."

The provided Article 1888 of the KUH Perdata highlights the significance of having a flawless proof of a deed by comparing its contents with the minutes or the original deed. The minutes of the deed serve as the essential foundation for the Notarial Deed, as without them, there would be no possibility of copying or referencing the deed. Once the minutes of the deed have been fully signed by the presenters, witnesses, and the relevant notary, a copy of the deed can be created, accompanied by a statement affirming the complete signing of the minutes. In the event that force majeure, such as a fire, causes damage or destruction to the minutes of a deed, the original deed loses its authenticity. However, the copy of the deed retains its legal validity and holds the same evidentiary weight as the original minutes. Nevertheless, questions may arise regarding the similarity of the contents and the level of legal certainty when dealing with a copy of the deed that lacks the original minutes.²³

Article 1338 in conjunction with Article 1320 KUH Perdata emphasizes that the law does not apply retroactively to legal acts, namely agreements agreed to by parties. Applicants who have an interest in a copy of the deed that has been provided by the Notary, can file a lawsuit at the local District Court, with the aim of the copy of the deed remaining valid in its correctness so that the legal action in it will also remain validly binding, the contents of which are the same as the minutes of the deed or the original deed in before a District Court Judge.²⁴

The claimant can file a lawsuit in court against the copy of the deed in his possession, to maintain the legal force of the copy of the deed which is also regulated in Article 1889 points 1 and 2 KUH Perdata.

The article above confirms that, if the copy of the Deed that has been legally issued by the Notary after the Minutes of the Deed has been destroyed, then the Applicant can file a

lawsuit in the District Court (or make it on the order of the Judge) and the copy is made known to the Applicants concerned.²⁵ This explanation means that the copy of the deed remains legally valid by going through the lawsuit procedure in court which is ratified directly by the judge.²⁶ The process of filing a lawsuit in the District Court against the legalization of a copy of the Deed by the Applicant, namely:

1. The Applicants or heirs and those who have an interest in the Deed by attaching a Power of Attorney, as Plaintiffs who register an ordinary civil lawsuit at the local District Court regarding Ratification of a Copy of the Deed. The defendant is the notary concerned.
2. The Applicants as Plaintiffs submit a written lawsuit according to the provisions of Article 118 paragraph (1) Het Herzien Indonesisch Reglement (HIR) which states that: "Civil lawsuits which in the first instance fall within the scope of the District Court's authority, must be submitted with a letter of demand (claim letter) signed by the Plaintiff, or by his representative according to Article 123, to the Chairman of the District Court at the Defendant's place of residence, or if his place of residence is unknown, to the Chairman of the District Court at his actual place of residence." The lawsuit letter is signed by the plaintiffs or their representatives based on a special power of attorney and given the date and complete information regarding the identity of the plaintiff and defendant.²⁷
3. The lawsuit is registered with the local District Court Registrar's Office and pays the court fees determined by the plaintiff and brings a copy of the deed that has been legalized by a Notary which has previously been provided based on the Deed Minutes guidelines, where the Deed Minutes have not been destroyed.
4. Wait for the summons to the hearing from the local District Court for the Plaintiff (the Applicants) and the Defendant (the Notary concerned) and attend the hearing according to the predetermined schedule;
5. Civil lawsuits in determining the ratification of the copy of the deed are carried out by a single judge who is also attended by the parties, namely the plaintiff and the defendant.

Ratification of a copy of a deed through a lawsuit means that a copy of a deed that has previously been legalized by a notary has binding legal force even though the minutes of the deed have been destroyed due to the notary's negligence. The rights of the parties and interests in the copy of the deed still apply as agreed by the parties in writing.

Conclusion

If a notary negligently loses deed minutes, they may be held responsible in several ways. Firstly, they must report the loss to the police and submit an application to the Chairman

²² Astari Priyandini, "Kedudukan Hukum Salinan Akta Notaris Dalam Hal Terjadi Musnahnya Minuta Akta", *Justitia Jurnal Hukum*, Vol. 2 (1), 2018, hlm. 66–85.

²³ Winarno, Dedy Prasetyo, "Konsekuensi Yuridis Salinan Akta Notaris yang Tidak Sama Bunyinya dengan Minuta Akta Terhadap Keabsahan perjanjian", *Arena Hukum*, 2016, hlm. 411–27.

²⁴ Habib Adjie, *Memahami dan Menguasai Teori Akta Notaris Ragam Awal Akta, Komparasi dan Akhir Akta Notaris*, 2018, hlm. 21.

²⁵ Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan Persidangan, Penyitaan, dan Putusan Pengadilan*, Sinar Grafika, Jakarta, 2007, hlm. 29.

²⁶ Taslim dan Yanti, "Akibat Hukum Terhadap Minuta Akta Sebagai Protokol Notaris Yang Musnah Dalam Penerbitan Salinan Akta", *Universita Islam Indonesia*, 2021, hlm. 51.

²⁷ Sutantio, Retnowulan, dan Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori dan Praktik*, Mandar Maju, Bandung, 2019, hlm. 28.

of the Local District Court for the determination of creating new minutes based on the reported missing ones. The notary may also face civil liability, which involves compensating any parties who have been harmed as a result of their negligence. Additionally, there may be administrative, criminal, and KEN consequences. It is important to note that the responsibility for lost deed minutes falls under the continuous duty of the notary as part of their Notary Protocol, as stated in Article 15 (1) in conjunction with Article 16 (1) letter b UUJN.

An examination of a notary that results in the loss of deed minutes due to negligence must first be reported by the injured parties to the MPD, then the MPD will forward it to the authorized MPW in accordance. Meanwhile, sanctions for a notary whose minutes of the deed are lost may be imposed due to the notary's negligence or error, then he or she may be subject to sanctions in the form of Administrative Sanctions, Civil Sanctions; and Criminal Sanctions.

Efforts to obtain a copy of the deed for the applicant, namely that the applicant can file a lawsuit in court against the copy of the deed in his possession, this is regulated in Article 1889 points 1 and 2 KUH Perdata, this article confirms that the applicant can file a lawsuit with a notary at the local District Court, to obtain validation of a copy of the deed that has previously been legalized by the Notary concerned so that its legal force is still binding for parties interested in the copy of the deed.

Suggestions

It is recommended that the government establish new regulations in the Notary Position Law regarding the storage of minutes of deeds, and there needs to be further regulation as an anticipatory effort if in the future the minutes of deeds are lost, such as establishing an archival body formed by the Ministry of Law and Human Rights to store soft data. and the physical data is at the agency, the soft data is stored on a database server and the physical data is stored in a box or safe with strict security. And also for notaries so that the repertory for deeds is made the same as the legalization repertory which contains the object of the agreement, the parties, the type of agreement, etc., so that when it is lost it is clear what is contained in the lost deed. Then, supervision from the MPD or MPW is a good idea to carry out periodically and completely every month to minimize the loss of Deed Minutes.

It is recommended that notaries, in carrying out their position as public officials who are authorized to make authentic deeds, understand and implement the provisions of the UUJN as guidelines in carrying out the Notary profession.

It is recommended that parties or heirs or people who have an interest in the deed, can keep a copy of the deed, both the copy of the first deed and a copy of the second deed and so on, which have been legalized safely and securely, if at any time problems arise such as the loss of the minutes of the deed. Notary office, then it can be accounted for as appropriate.

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