



Liability of notaries who do not provide copies of deeds to parties

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Abstract

This research aims to determine and understand the responsibility and sanctions against Notaries if they do not fulfill their obligations to provide Copies of Deeds to the parties. The method used in this research is the empirical juridical research method. Empirical juridical research is field research conducted to examine the applicable laws and what actually occurs in society. The results of the research based on the Police Investigation Report of the Aceh Provincial Supervisory Council Number 002/BAP/MPDN Aceh Besar/III/2022 stated that the Notary does not submit a copy of the deed to the parties based on the reason is that his legal representative represents the party concerned. Copies of the deed may only be requested or submitted to the wife or heirs. In carrying out their duties, notaries must be guided by Law Number 2 of 2014 concerning Notary Offices and the Notary Code of Ethics. After an examination and guidance by the Regional Supervisory Council of Aceh to the Notary, it was decided that the Notary was given a verbal sanction by the Regional Supervisory Council and required to submit a copy of the Notarial Agreement of Sale and Purchase of Shares of the limited liability company (LLC) S No. 03 dated March 08, 2021. The Deed of Resolution of the Extraordinary GMS Circular meeting of LLC S No. 11, dated March 24, 2021, to the attorney of the party concerned with several conditions because the Regional Supervisory Council stated that the principles of power of attorney could be given to anyone, as long as the recipient of a power of attorney is legally capable. Therefore, the responsibility given to the Notary is moral responsibility as a means of warning for correcting the violations he has committed.

Keywords: notary, deed copy, liability

Introduction

A notary is a public official authorized by law to make an authentic deed. Article 15 paragraph (1) of Law Number 2 of 2014 concerning Notary Position or hereinafter referred to as UUJN, explains that Notary is authorized to make an authentic Deed which includes actions, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide a grosse, copy, and quotation of the Deed. All of those are as long as the making of the Deed is not also assigned or excluded to other officials or other people stipulated by law. Deeds are written evidence that can be used as perfect evidence for the parties listed in the Deed.

As Public Officials carry out their positions, notaries have obligations and prohibitions emphasized in the UUJN and the Notary Code of Ethics. Based on article 16 letter (a) of the UUJN, in carrying out his/her position, a Notary must act trustworthy, honest, careful, independent, and impartial and protect the interests of the parties involved in legal actions. It is also explained in article 3 of the Notary Code of Ethics that in carrying out their positions, Notaries are required to have good morals, manners, personalities, integrity, behave honestly, impartially, be trustworthy, thorough, full of a sense of responsibility, aware of the limits of their authority, and have a sense of justice. With integrity possessed by a Notary, the public as clients and recipients of services from Notaries will avoid manipulative, corruptive, collusive, or dishonest/untruthful actions in making Deeds.

The substance of the Notarial Deed is the will and desire of the parties who come to the Notary. This is in accordance

with what is stated in Article 38 paragraph (3) letter (c) of the UUJN so that the contents of the Deed are not the fabric or desire and also the will of the Notary. Still, the Notary only frames it as a Notarial deed or Original Deed per the rules in the UUJN. The original Deed includes the signatures of the signatories, witnesses, and Notary, which is kept as part of the Notary Protocol. If the Notary has completed the process of making the Original Deed, the fulfillment of the requirements by the parties has been carried out, the reading of the Deed in front of the parties has also been carried out until the signing by the parties, witnesses, and Notary as the authorized public official has been carried out. At this stage, the Original Deed has become a State Archive, which must be kept and maintained by the Notary with both substance and physical form. After the Original Deed is complete, the Notary will make a copy of the Deed, which will be given to the parties .

Article 1, paragraph 9 of UUJN explains that a copy of the Deed is a verbatim copy of the entire Deed. At the bottom of the copy of the Deed, there is the phrase "given as a COPY with the same meaning." The copy of the Deed has a Notary statement from the beginning to the end, and there is only the Notary's signature. The beginning of the Deed explains that the parties have appeared before the Notary, and at the end, there is a statement that the Deed has been signed perfectly and has the same copy. The Notary must provide a copy of his Deed for the confronters. The obligation performed by the Notary is the same as the storage and maintenance of an Original Deed. The substance of the Deed Copy must be based on the Original Deed, so the Deed Copy cannot be issued before the Notary completes the Original Deed. The Notary will match the copy of the

Deed with the Original Deed before it is signed by the Notary. This step is taken as a form of prevention and re-examination so there is no mistake in the difference between the Original Deed and the Copy of the Deed.

A copy of the Deed is essentially a handle for the parties, which, if there is a dispute in the future, the copy of the Deed has the same legal force as the Original Deed. The copy of the Deed is the right of the parties, and the Notary is obliged to issue it as stated in Article 16 letter (d) of the UUJN that in carrying out his/her position, the Notary is obliged to issue a Grosse Deed, Copy Deed, or Deed Excerpt based on the Original Deed. However, some cases occur in the community where the Notary does not carry out his obligation to submit copies of the Deed to the parties. In the case of a Notary not fulfilling his obligation to submit a copy of the Deed to a client represented by his attorney, the Notary refused because the attorney was not entitled to receive a copy of the Deed based on Article 54 paragraph (1) of the UUJN. This Article explains that a Notary can only provide, show, or disclose the contents of the Deed, Deed Grosse, Deed Copy, or Deed Excerpt to a person with a direct interest in the Deed, heirs, or people who acquire rights unless otherwise provided by statutory regulations.

Research method

This research was conducted using the empirical juridical method. Empirical juridical research analyzes the rules of law that apply in written or unwritten form associated with the reality that occurs in society as a legal event. Empirical juridical research is known as field research by looking at law as a pattern of behavior or phenomena shown by applying the rule of law, which is carried out by processing primary data information obtained in the field associated with applicable legal norms.

Result and discussion

The word Notary derives from the word "Notariat" which comes from the servant's name, "notarius." The word has existed since Roman times and at that time, the nickname was given to people who practiced writing. Notaries in Indonesia are known as public officials. Public officials are one of the organs of the state equipped with legal authority to perform public services to the public, especially concerning legal acts in the civil sector, namely in the making of authentic deeds. Based on Law Number 30 of 2004 concerning the Office of Notary, which was later amended by Law Number 2 of 2014 in Article 1 number 1 of UUJN, defines that Notary is a public official who has the authority to make an authentic deed and Notary also has other powers as referred to in this Law or based on other laws.

A copy of the Deed is a verbatim copy of the entire Deed, which reads like the original Deed or the Minute of Act. The Deed Copy is made after the Original Deed is completed by the Notary and signed by the parties, witnesses, and the Notary. The copy of the Deed issued by the Notary must have the same substance as the Original Deed. However, the Deed only contains the Notary's signature. A copy of the Deed is the same coverage as the original Deed or a copy of the entire Deed contained in the original Deed.

The confronting parties are clients who request services from a Notary to make an Authentic Deed. The wishes and desires of the confronting parties and the Notary are stated as a Deed while still guided by the UUJN and the Notary Code of Ethics.

One of the obligations of the Notary in the UUJN is to issue a copy of the Deed to the parties who receive Notary services in making an Authentic Deed. In essence, the Notary makes a Deed for his benefit as a provider of legal services in civil matters and for the parties who appear before him as those with a direct interest in the Deed. Therefore, the ownership of a copy of the Deed is the right of the parties. A Notary is guided by the UUJN and the Notary Code of Ethics to exercise all his authority. The Notary Code of Ethics supports the enactment of the UUJN in maintaining the position of a Notary. Besides, it also serves as a guide for Notaries in carrying out their positions. Based on the police investigation report Number 005/BAP/MPWN Aceh/IV/2022, the Aceh Provincial Notary Supervisory Council (which will hereinafter be abbreviated as MPWN) explained the reasons for the Notary not providing copies of the Deed to the parties as follows.

- a. During the examination by the Regional Supervisory Council of Notary (hereinafter will be abbreviated as MPDN) of Aceh Besar Regency on March 1, 2022, it was agreed for the Notary (from now on will be referred to as the Reported Party) to submit a copy of the Notarial Sale & Purchase Agreement of Shares of LLC. S No. 03, dated March 08, 2021, and the Deed of Resolution of the Regular General Meeting of Shareholders of LLC. S No. 11, dated March 24, 2021, to the reporting client Mr O through the MPDN of Great Aceh Regency for further submission to the Complainant. However, when MPDN demanded a promise to be given a copy of the Deed in question, the reported party argued on several legal considerations. Thus, the Respondent is not willing to submit the requested copy of the Deed except to the heirs or the rightful person, not through MPDN or the Complainant's attorney;
- b. The Reporting Party said that the Power of Attorney provided by the Complainant's attorney was not a Power of Attorney to receive a copy of the Notarial Agreement of Sale and Purchase of Shares of LLC. S and the Deed of Resolution of the Circular Meeting of the Extraordinary GMS of LLC. S but a Special Power of Attorney for trial and only a photocopy.
- c. Referring to Article 54 paragraph (1) of UUJN, the reported party understands that the reporting attorney is not the person entitled to receive a copy of the Deed;
- d. The reported party is more pleased if the party from Mr O submits a power of attorney to his wife specifically to take a copy of the Deed.
- e. MPWN stated that, in principle, a power of attorney could be given to anyone as long as the recipient of a power of attorney is legally competent.
- f. The Reported party is willing to submit the Deed Copy with a note to change the Power of Attorney into a Power of Attorney to collect the Deed Copy in question.

Based on the legal facts described above, the Notary did not provide a copy of the deed to the visitors because the Notary was guided by Article 54 paragraph (1) b of the UUJN, stating the Notary can only provide, show or notify the contents of the deed, Grosse Deed, Deed Copy or Deed Excerpt, to a person with a direct interest in the deed, heirs, or people who acquire rights. Unless otherwise provided by laws and regulations, the Notary understands that the

parties' lawyers are not entitled to receive a copy of the deed.

A copy of the deed is the right of the parties, so if the right is not given to the parties, then the Notary has neglected his obligations and responsibilities. Basically, the definition of rights in the Indonesian Dictionary is the power to do something because it has been determined by laws and other rules. A right is something that must be given to someone because of that person's position or status. Based on the explanation above, it can be interpreted that the person who obtains the right is the person who obtains the power to do something based on the right given to him by the entitled party. Article 1792 of the Civil Code explains that granting the power is an agreement by which one person gives power to another who accepts it for and on his behalf to carry out an affair. So based on the explanation of the article, two people have a role in a power of attorney, including the authorizer and the recipient of a power of attorney, who is given an order or mandate to do something for and on behalf of the authorizer.

In practice, notaries in carrying out their positions are under the supervision and control of the Supervisory Council. In this case, it is directly supervised by the Regional Supervisory Council. Supervision and control of notaries by the Supervisory Council are preventive and/or repressive. Preventive relates to supervisory actions carried out to prevent an undesirable condition. In contrast, repressive actions are a form of action that is applied to provide guidance to notaries so that notaries have a standard of awareness and knowledge if they make mistakes with the imposition of sanctions.

At the Regional Supervisory Council stage, it has no authority to impose any sanctions. However, the Regional Supervisory Council has the authority to receive reports from the public and Notaries regarding allegations of Notaries committing violations. The alleged violation must be accompanied by sufficient evidence and can be accounted for. After that, the Regional Supervisory Panel holds a hearing to examine alleged violations of the Notary Code of Ethics or violations of the implementation of the Notary position, but the Regional Supervisory Panel is limited and authorized not to impose any sanctions. Article 71 letter (e) of the UUJN explains that the Regional Supervisory Panel is only authorized to report the results of its hearing and examination to the regional supervisory panel with a copy to the reporting party, the Notary concerned, the central supervisor and the Notary Organization.

Sanctions imposed on Notaries who commit violations aim to restore the balance of the social order disturbed by violations of the rules in its original state. Sanctions are a means of coercion, in addition to punishment and to comply with the provisions specified in the regulation or agreement. Sanctions are also interpreted as a means of coercion as punishment for disobeying the rules or agreements. Sanctions can be associated with the principle of legal compliance. According to Soerjono Soekanto, compliance is based on the expectation of a reward and an attempt to avoid punishment or sanctions that may be imposed if someone violates the provisions of the law. In essence, legal compliance is a compliance or form of community compliance caused by the existence of sanctions for violators of these rules, so the purpose of compliance is to avoid existing legal sanctions.

The inclusion of sanctions in various legal rules is an obligation that must be included in every applicable legal rule. The rule of law will not work or be useful if it cannot be enforced through sanctions and procedural law enforcement or (procedural law).

Based on the results of the Aceh Province MPWN examination of the Reporting Party, the sanction given to the Reporting Party is the imposition of a verbal warning/reprimand sanction. Referring to Article 73 (1) letter (e), MPWN's authority includes giving verbal and written sanctions. Furthermore, Article 85 of the UUJN regulates the sanctions imposed on Notaries that are directly related to their position, which can be in the form of.

- a. Oral reprimand;
- b. Written reprimand;
- c. Temporary dismissal;
- d. Honorable dismissal; or
- e. Dishonorable discharge.

The function of the oral reprimand sanction given to the Notary is based on the violation committed by the Notary. In the case of the Notary, the violation committed is a violation at the first stage, namely a violation with a form of sanction in the form of an oral warning; then, the violation given by MPWN to the Notary is a moral violation. A moral violation is a violation that can be interpreted as reparative sanctions. This sanction aims to rectify the violation of a rule of law that has been committed. The placement of verbal reprimand sanctions in the first order is a warning from MPMW to Notaries who commit violations when exercising their authority. The sanction given is hoped that the Notary can correct his mistakes and then will not take actions that will trigger him to commit another violation in carrying out his profession with guidance by the Supervisory Panel to the Notary concerned.

By giving the sanction of verbal reprimand to the Notary who committed the offense, it is hoped that the Notary will be more responsible, aware of the law that binds or is attached to him, and trustworthy in carrying out his position based on applicable law. In addition, the complainant and the public can avoid the actions of Notaries that can be detrimental. Sanctions aimed at Notaries are also a realization that Notaries have violated the provisions regarding the implementation of Notary duties as stated in the UUJN and the Notary Code of Ethics. Furthermore, the imposition of sanctions against Notaries is also to protect the public from Notary actions that can be detrimental. For example, holding copies of the Deed for too long can cause losses to parties directly interested in the Deed.

Holding copies of the deed for too long is an attitude of distrust because the parties or clients have entrusted the making of the deed to the Notary. In this case, after the deed is completed, a copy of the deed is not submitted to the client, which can cause harm to the client. Moreover, by withholding the copy of the deed for too long, the Notary does not protect the interests of the client involved in the legal act in the deed because a Notary is supposed to maintain and prioritize the balance between the rights and obligations of the parties to the deed or the client which in this case, the copy of the deed is the right of the client.

Based on the above provisions, the legal responsibility that the Notary must carry out is Moral responsibility or Professional Ethics. According to professor Dr. Valerine J.L. Knockoff, as a legal profession in the Notary Profession,

one of the responsibilities that must be carried out is a moral and professional responsibility. Moral responsibility relates to the Notary carrying out his profession guided by the UUJN and the notary code of ethics, which is the scope of supervision and examination of the notary supervisory board if there has been a report from the public. In addition, moral responsibility can change into legal and professional technical responsibility. This change in responsibility occurs if the actions taken by the Notary in carrying out his/her position have exceeded the limits related to morals. For example, actions that cause harm to his/her clients so that the Notary can be sued for a charge, compensation, and interest by clients who have felt harmed by the Notary. In the case of the Notary, the act of not issuing or withholding copies of the deed to the parties is a form of immaterial loss for the parties. After being given a verbal warning, supervision, and guidance by the Aceh Province MPWN, the Notary concerned was willing to issue a copy of the Notarial Agreement of Sale and Purchase of Shares of LLC. S Number 03, dated March 08, 2021, and the Deed of Resolution of the Regular General Meeting of Shareholders of LLC. S Number 11, dated March 24, 2021, to the client's attorney on mutually agreed terms.

The form of moral responsibility and professional ethics personally is a form of conscious awareness. If a Notary has committed a violation that can cause harm to his client, the Notary must be responsible and be aware of the violations he has committed. In the case of the Reported Party above, the violation committed by the Reported Party after being examined by MPDN and MPWN Aceh Besar Regency is based on the minutes issued by MPWN. MPWN Aceh Besar Regency gave the reported party verbal sanctions because the violations committed were still within the scope of moral violations or the Notary code of ethics that did not affect the authenticity of the deed he made.

Conclusion

In essence, a copy of the Deed is the right of the parties listed in the Deed, and the Notary is obliged to issue a copy of the Deed he made. Article 15, paragraph (1) of the UUJN explains that Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an original Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide a grosse, copy, and quotation of the Deed. All insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law. Furthermore, in Article 16 paragraph (1) letter d, Notary is also obliged to issue Grosse Deed, Deed Copy, or Deed Quotation. Based on case number 005/BAP/MPWN Aceh/IV/2022 MPWN Aceh Province, the Notary is willing to issue a copy of the Notarial Agreement of Sale and Purchase of Shares of LLC. S Number 03 dated March 08, 2021, and Deed of Resolution of the Extraordinary GMS Circular meeting of LLC. S Number 11, dated March 24, 2021, to the parties' legal representatives with the conditions determined and agreed mutually. Thus, the sanction given by the Regional Supervisory Council to the Notary is in the form of an oral warning sanction following the provisions in article 73 (1) letter (e) of the UUJN, which states that the MPWN's authority includes imposing sanctions in the form of oral warnings and written warnings. Subsequently, Article 85 of the UUJN regulates the sanctions imposed on

Notaries directly related to their position, which can be an oral reprimand. Therefore, the accountability of the Notary is a moral and professional ethics accountability considering that the sanction given is an oral warning sanction. The responsibility of the Notary is closely related to the morals and integrity of the Notary in carrying out his/her position. A Notary is said to have no integrity and good morals if he/she does not carry out the responsibilities clearly stated in the UUJN and the Code of Ethics that bind the Notary when the Notary carries out his/her position.

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