



The legal consequences of typing errors in the making of an authentic deed by a notary after the expiration of their term

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Abstract

A notary performing their duties and authorities during their term of office must be based on applicable regulations, and the responsibility of their duties and authorities persists even after the notary's term of office has ended until their death. The retirement age for a notary is 65 years old and can be extended for 2 years. A notary who has retired is automatically not allowed to carry out duties and authorities in making authentic deeds. The obligation of a notary who has finished their term of office is to inform the Regional Supervisory Council about the end of their term of office and propose another notary as the holder of the Notary Protocol. However, the responsibility for the Notary Protocol still lies with the retired notary, including if there are errors in the deeds they have made. The purpose of this study is to analyze the legal consequences and accountability for typing errors in authentic deeds made by a retired notary. To answer the main problem in this study, the author uses a juridical-normative method and relies on secondary data in the form of literature studies. Based on the results of the study, the legal consequences of typing errors in authentic deeds are that the deed is degraded to a private deed, null and void, or can be canceled. The responsibility of a notary who has finished their term of office for typing errors in authentic deeds begins with requesting permission from the District Court to allow the holder of the Notary Protocol to fix the deed. Once it has been fixed, the deed can be corrected by making a Deed of Correction and copies must be given to all parties involved.

Keywords: typing errors, responsibility, retired notary

Introduction

A Notary Public, during his tenure, must abide by the applicable provisions and the responsibility for his duties and authorities still attaches even after his term has ended. This is done to prevent losses to the parties involved.

A Notary Public is a public officer who practices his profession in providing legal services to the community to provide protection and legal guarantees to achieve legal certainty in society. Public officials are people who carry out some of the public functions of the state, especially in civil law. A Notary Public is a public official appointed by the government, in this case the Minister of Law and Human Rights of the Republic of Indonesia, who has the power or authority and function to serve the interests of the general public.

A notary public has the responsibility to carry out their duties. The notary public's responsibility, which relates to material truth, is divided into four categories, namely ^[1]:

1. The notary public is civilly responsible for the material truth of the deeds they have made.
2. The notary public is criminally responsible for the material truth of the deeds they have made.
3. The notary public is responsible for the material truth of the deeds they have made based on the regulations of the notary profession (UUJN).
4. The notary public has a responsibility in carrying out their duties according to the Notary Code of Ethics.

Article 65 of the Notary Profession Law (hereinafter referred to as UUJN) No. 30 of 2004, as amended by UUJN No. 2 of 2014 states that, "A notary public, substitute notary public, special substitute notary public, and temporary notary official are responsible for every deed they have

made even if the notary protocol has been handed over or transferred to the notary protocol keeper." Based on the provisions of Article 65 of UUJN No. 30 of 2004, as amended by UUJN No. 2 of 2014, it can be stated that ^[2]:

1. Those who are appointed as a notary public, substitute notary public, special substitute notary public, and temporary notary official are still considered to carry out their personal duties and remain responsible for the deeds they have made even after their term of office has ended, up to the specified time limit according to the provisions of the applicable regulations in the field of state documents.
2. The responsibility of a notary public, substitute notary public, special substitute notary public, and temporary notary official remains attached, wherever and whenever the former notary public, former substitute notary public, former special substitute notary public, and former temporary notary official may be. This is in accordance with the interpretation of Article 65 of the Notary Profession Law (UUJN) No. 30 of 2004, as amended by UUJN No. 2 of 2014.

The responsibility of a notary public continues even after their term of office has ended. The notary public's responsibility remains attached even after they have passed away. The end of the notary public's term of office is regulated in Article 8 of the Notary Profession Law (UUJN), which stipulates that ^[3]:

1. A notary public stops or is dismissed from their position with honor due to:
 - a. Death;
 - b. Having reached 65 (sixty-five) years of age;
 - c. Self-request;

- d. Inability to carry out the duties of a notary public continuously for more than 3 (three) years, either spiritually and/or physically;
 - e. Holding another position as stipulated in Article 3 letter g.
2. The age requirement as referred to in paragraph (1) letter b can be extended up to 67 (sixty-seven) years of age with consideration of the relevant individual's health. Based on this article, the end of a notary public's term of office is due to the notary public passing away, reaching 65 years of age, which can be extended according to the notary public's health and self-request, and a notary public who is unable to perform their duties for 3 (three) consecutive years.

Retirement age for a Notary is 65 years old and can be extended for 2 years, making the total working age of a Notary 67 years old, in accordance with the provisions stipulated in Article 8 of UUJN No. 30 of 2004 jo. UUJN No. 2 of 2014. After reaching retirement age, a Notary is not allowed to carry out duties and authority in making authentic deeds. According to Article 65 of UUJN No. 30 of 2004 jo. UUJN No. 2 of 2014, a Notary is responsible for every deed he/she makes, even if the Notary's protocol has been transferred or handed over to the protocol keeper. The Notary's protocol is a collection of documents that are state archives that must be stored and maintained by the Notary. The protocol will be taken over by the protocol holder designated by the Notary or by the Regional Supervisory Council (MPD) or the Minister. The Notary's protocol in Article 62 of UUJN consists of:

1. The deed minute;
2. The register of deeds or reportorium;
3. The register of deeds under signature executed in the presence of a Notary or the registered under signature deeds;
4. The register of names of visitors or klapper;
5. The protest register;
6. The register of wills;
7. Other register required to be kept by Notary in accordance with the provisions of laws and regulations.

In practice, authentic deeds made by a Notary often encounter issues which result in the deed being downgraded to a private deed or being nullified by court order due to legal defects found in the deed's creation. Mistakes in an authentic deed can result in the loss of someone's rights or the imposition of obligations on someone ^[4].

One of the mistakes that can be made by a Notary is a typographical error in their deed.. Typographical errors. are errors that occur in the Notary deed, not because of intention, but rather due to negligence or carelessness on the part of the Notary, resulting in what is written in the Notary deed not being in accordance with what was intended to be conveyed in the deed ^[5].

Typographical errors in Notary deeds can be substantive or non-substantive. Non-substantive typographical errors mean that the error does not cause a significant difference in meaning in the substance of the deed, or even if there is a difference in the meaning of the words, the context of the sentence cannot be interpreted differently from what was actually intended ^[6]. On the other hand, substantive typographical errors result in a significant difference in

meaning or intention in the substance of the deed, so that the substance of the deed becomes not in accordance with what was intended to be conveyed in the deed by the parties (in party deeds) or by the Notary (in the deed relaas) ^[7].

Typographical errors often occur in the making of Notary deeds, one of which is the deed made by Notary Endang Soedrawati, who once made a supplementary credit agreement deed, Number 52 dated April 17, 2002, on behalf of PT Bank Rakyat Indonesia (Persero) in Majenang and Agus Madjid, Law graduate. The deed was written with reference to measurement letter number 39/2001, whereas the actual and intended measurement letter number was 39/2002 based on Certificate of Ownership Number 00079 in the name of Munawar Holil. Based on the typographical error in the deed, Notary Endang Soedrawati attempted to correct it. However, Notary Endang had retired since June 11, 2010. Due to the typographical error and the Notary's term of office having ended, the Notary submitted a request to the Cilacap District Court to appoint Notary Alfonsa Ellya Mersilia Tangkilisan, S.H, M.Kn as the holder of the Notary Protocol on behalf of Endang Soedarwati, S.H to correct the typographical error in credit agreement deed Number 52 in 2002 from originally written measurement letter number 39/2001 to be corrected to measurement letter number 39/2002.

Research Methods

The first approach, known as the statutory approach, is an approach that cannot be separated from legal provisions ^[8]. The second approach, the conceptual approach according to Peter Mahmud, stems from views and doctrines that have developed within the field of law. According to Peter, the conceptual approach is taken when researchers do not base their analysis on existing legal provisions, which is necessary when there are no or insufficient legal provisions to address the issue at hand. The third approach is the historical approach, which according to Johnny Ibrahim, is used because every legal provision has a different historical background ^[9].

Result

A Notary is responsible for the deeds he or she has created, both party deeds and narrative deeds, because notarial deeds are considered authentic and have perfect evidence. This means that no other proof is required since the deeds themselves are considered authentic, in accordance with Article 1868 of the Civil Code, which lists the elements of an authentic deed as follows:

1. The deed is made in the form prescribed by law;
2. It is made before an authorized public official;
3. The deed is made by an authorized public official in the area where the deed is made.

Deeds created by a Notary are commonly referred to as notarial deeds, which serve as written evidence and are considered perfect proof if made in accordance with applicable regulations. However, the authenticity of an authentic deed created by a Notary may be compromised if there are intentional or unintentional errors that affect the meaning of the content of the deed and if such errors are not corrected or remain despite correction ^[10]. Writing errors are defined as errors that occur not due to intentional misconduct, but due to negligence or carelessness on the part of the Notary, resulting in what is written not matching the actual content reflected in the deed ^[11]:

1. External evidence (Uitwendige Bewijskracht) - A deed should fulfill the requirements and regulations of authenticity from the outset, which can be determined by external evidence. The validity of a notarial deed is established through external evidence, which confirms its authenticity from the beginning. A notarial deed that does not meet the requirements and regulations of authenticity due to an error, such as a writing error, does not have strong proof power as an authentic deed.
2. Material evidence: The material of the deed refers to the intentions and objectives of the parties, which are carried out by the official as described in the deed. What is described by the parties in the deed must be true and consistent with reality. If the notarial deed contains material that is not true to what was seen, heard, and witnessed by the notary, or what was communicated by the parties in front of the notary, then the deed does not have strong evidentiary power as an authentic deed due to errors in the material.

Formal Proof (Formele Bewijskracht) is a proof of the fact that the parties who appeared before a Notary and signed the written agreement in the deed are genuine. Formal authentic deeds have the power to prove the truth of the number, date, day, month, year, time, and place where the deed was made and signed. However, if it is made contrary to the facts, it can be assured that there is an error in the formal aspect. Thus, the deed does not have strong evidential power as an authentic deed. With regard to the evidential power of this formal aspect, party deeds and relaas deeds are the same. This means that the official statements contained in both types of deeds or the statements of the parties in the deeds, whether in the party deed or the relaas deed, have formal evidential power and are binding on everyone regarding what is stated above their signatures.

As a result, a deed with such errors is no longer perfect evidence and is not authentic, but becomes a private deed. In accordance with the contents of Article 16 paragraph (9) of the Amendment to Law No. 2 of 2014 concerning Notary Law which states that "If one of the requirements as referred to in paragraph (1) letter m and paragraph (7) is not fulfilled, the deed in question only has evidential power as a private deed." The error in making the deed can be said to be negligence in making the deed. Negligence is deemed to occur if there are elements, namely ^[12]:

1. Typos in a Notarial Deed can be corrected by making a new copy of the deed that has similarities to the original deed. The new deed will have the same full probative force as the original deed.
2. If a Notarial Deed is created for minutes of a meeting, but the written document states it is a statement about the meeting, then there is a clear error in the form of the deed as the title contains errors and has a different meaning.
3. Negligence in the information provided by the parties appearing before the Notary, which is correct at the time of creating the deed but later turns out to be incorrect.

Have the following consequences on the creation of an authentic deed ^[13]:

- a. The deed may be degraded to a private deed
- b. The deed may be deemed null and void if objective requirements are not met

- c. The deed may be annulled if there are requests from interested parties.

If a Notarial Deed is disputed by the parties involved, then ^[14]:

1. The parties can return to the Notary to create a deed of revocation. The revoked deed will no longer bind the parties, and they will bear the consequences of its revocation.
2. If the parties cannot agree to revoke the deed, one party may file a lawsuit to downgrade the Notarial Deed to a private deed. After the downgrade, the judge may interpret the Notarial Deed and determine if it still binds the parties.

An official document will remain an authentic document as long as there are no objections to its authenticity and no one can prove that it is flawed. In such cases, the document is considered to be from a legitimate authority under the law. Conversely, if the document is shown to be flawed by another party, it may be nullified or declared invalid. Notarial deeds may be cancelled if parties involved file a lawsuit to invalidate them. Only the parties involved have the power to nullify a Notarial deed ^[15].

Conclusion

An act that contains errors has legal consequences, namely that its validity as an authentic act is no longer perfect and becomes a private deed. As stated in Article 16 paragraph (9) of the Amendment to Law No. 2 of 2014 concerning Notary Public which states that "If one of the requirements as referred to in paragraph (1) letter m and paragraph (7) is not fulfilled, the relevant deed only has evidentiary power as a private deed." The act can also be considered null and void if the objective requirements are not fulfilled or if the act does not meet the subjective requirements, and can be cancelled upon request from interested parties. Notaries have a responsibility for the acts they create, even after their term of office has ended or they have passed away. Article 51 of the Notary Public Law confirms that Notaries are authorized to correct typing errors in the minutes of deeds that have been signed so that they do not become private deeds. A Notary who has ended their term of office still has a responsibility to correct typing errors in the deeds they have created, even if they cannot correct them directly. The accountability of a Notary who has ended their term of office for typing errors in deeds that have been created and signed by the parties begins by first submitting a request for permission to the District Court to request the Notary with the Protocol to correct the deed. After the Notary with the Protocol has obtained permission from the District Court to correct the deed, they can create a Correction Report and make a note about it in the original Deed minutes by mentioning the date and number of the correction report deed, then provide a copy of the correction report deed to the parties involved. The Correction Report deed must be signed by both witnesses.

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