
NOTARY RESPONSIBILITY FOR LOSS OF LAND TITLE DUE TO NOTARY NEGLIGENCE

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Abstract

This article discusses the notary's responsibility for the loss of land certificates due to the notary's negligence. The purpose of this study is to find out Notary Responsibility for Loss of Land Title Due to Notary Negligence. This research uses normative or literature research methods by analyzing relevant laws and regulations regarding the authority and responsibilities of notaries. The research results show that notaries have civil liability for losses caused by negligence or deliberate action in carrying out their duties. This civil liability includes reimbursement of costs, compensation and interest to the party who feels aggrieved. Notaries also have a professional code of ethics that regulates their duties and responsibilities, including the obligation to safeguard the interests of related parties and act with integrity. In the case of loss of a land title certificate, the notary must be responsible for the documents entrusted and may be subject to civil sanctions if negligence occurs.

Keywords: responsibility, certificate, negligence and notary.

INTRODUCTION

Indonesia as a state of law has principles to ensure certainty, order and legal protection based on truth and justice in accordance with what is regulated in the Constitution of the Republic of Indonesia 1945 (Kusumaatmadja, 1995). Legal certainty is needed in people's lives, especially the public service sector which is currently growing along with the increasing public need for services. This also has an impact on Notaries. Notary is one of the State instruments appointed and dismissed through the Minister of Law and Human Rights (Menkumham) (Fransiska, 2021). The Notary's position as a functionary in society is still considered respected. A Notary Public is considered an official where someone can obtain legal advice and the information contained in the Notary Deed must be reliable, reliable and provide guarantees as strong evidence so as to provide legal protection for the community (Tan, 2000).

It is stated in Article 1 paragraph (1) of Law Number 2 of 2014 amending Law Number 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN) states that "Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or under other laws" (Indonesia & No, 2014). An authentic deed under Article 1868 of the Civil Code (hereinafter referred to as the "KUHPer") is a deed made in the form prescribed by law by or before a public official authorized for it at the place where the deed was made (Afifah, 2017). Notaries in carrying out their positions have a complex role because they play an important role in connecting social life, practical economics with laws and regulations and the legal world. Notaries as public officials (*openbaar ambtenaar*) are also responsible for making written evidence of legal acts that can be accounted for (Budiono & Moeliono, 2006).

Notaries in carrying out their positions are not those who get salaries from the Government but get Honorarium and can also get commissions / wages from management services (Khoirurrijal et al., 2022). Notaries as one of the general officials have a professional code of ethics in carrying out their positions, because notaries also participate in national development, especially in the field of law. In the code of ethics, it is stipulated that notaries in carrying out the duties of their office are aware of their obligations, work independently, honestly, impartially and with a sense of responsibility.

Notaries are based on moral values, so their work must be based on obligations, that is, there is good will in themselves, not depending on the goals or results achieved. Notaries really need inseparable morals and laws in order to be able to carry out their professional duties flawlessly professionally from society Tedjosaputro, (1994) In carrying out their duties, they must be responsible, meaning:

1. Willingness to do as well as possible any task that is included in the scope of the profession.
2. Act proportionally, without distinguishing between pay and free matters.
3. Willingness to provide reports on accountability or implementation of obligations.

A Notary in carrying out the duties of his office must adhere to the Notary Office Code of Ethics. Code of ethics is a guide, guidance, moral or moral guidelines for a particular profession or is a list of obligations in carrying out a profession compiled by members of the profession itself and binding them in practicing it. It can be concluded that the Notary Code of Ethics is a guide, guidance, moral guideline or decency of Notaries both as individuals and general officials appointed by the government in order to provide services to the general public, especially in the field of making deeds (Tedjosaputro, 1994).

Notary Code of Ethics as stipulated in article 3 paragraph (4) Notaries must behave honestly, independently, impartially, trustfully, thoroughly, full of responsibility, based on laws and regulations, and the content of the Notary oath of office. One of the obligations of a Notary Public is also regulated in the Notary Office Law as stipulated in article 16 paragraph (1) is to act honestly, thoroughly, independently, impartially, and safeguard the interests of related parties in legal actions. One of these obligations requires a Notary to safeguard the interests of parties, especially Notary clients, in legal actions he does with the help of a Notary. Certificate belonging to Notary clients is one of the things that must be maintained properly by a Notary. The submission of the Notary client's certificate should be given to the client with the knowledge of the relevant Notary. This is done in order to create legal protection for certificate owners and the implementation of the authority and obligations of a Notary as stipulated in the UUJN.

Notaries as custodians are obliged to guard the goods as reflected in Article 1706 of the Civil Code. Article 1694 of the Civil Code, "Custody of goods takes place, when a person receives another person's goods with the promise to keep them and then returns them in the same state". This provision stipulates that the Notary Public as the recipient of the entrustment in the form of the certificate to return the certificate in the same circumstances as the first time given by the client.

But in reality, not all Notaries carry out their obligations properly. One example related to this can be seen in the case of the Kendari court decision Number 14/Pdt.G.S/2020/PN Kdi. are Isran, S.E as plaintiff, PT Bank Mandiri (Persero) Tbk. Kendari Masjid Agung Branch as

Defendant I, and Notary Rayan Riadi, S.H., M.Kn as Defendant II. There was an unlawful act in the Kendari case, there was an unlawful fight in the case of applying for credit and the credit was declared paid off. After repayment of the credit, the plaintiff requested for the return of the certificate to Defendant I but defendant I submitted that the certificate was still in the office of Defendant II. That the Plaintiff always asked the Defendant about the return of the Certificate but the Defendant never gave a definite answer, so the Plaintiff sent a letter of complaint to the Financial Services Authority (OJK), and on December 23, 2019 Defendant I submitted a complaint response letter and an attachment letter from the statement of Defendant II explaining that the Certificate that became the plaintiff's credit guarantee was lost and was in the process of issuing a replacement certificate at the office Konawe land and takes approximately 3 months from the filing of the Notary Public statement. The plaintiff made oral confirmation to the local land office regarding the replacement of the certificate, but according to information from the local land office there was no application for the issuance of the replacement of the missing certificatet.

The event of loss of a certificate of land rights is a form of negligence of the Notary in carrying out his position, and shows that the certificate submitted in this case to the Notary does not seem to be protected or maintained properly because the Notary not only makes authentic deeds regarding all legal acts, but the Notary must also safeguard the interests of the parties involved and be responsible for the documents entrusted.

Based on this description, the researcher will discuss the issue of Notary Responsibility for it. To limit these problems, the subject matter was formulated How is the Notary's responsibility for the loss of land certificates due to Notary negligence.

METHOD RESEARCH

The method used in this study is a normative research method or literature that emphasizes legal norms by analyzing related laws and regulations regarding the authority and responsibility of Notaries based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. Peter Mahmud Marzuki, "Legal science is not descriptive, but prescriptive. The object of legal science is the coherence between legal norms and legal principles, between legal rules and legal norms, and coherence between non-individual behavior and legal norms. The approach method used in this study is the statutory approach (statute approach). The type of data used in this study is secondary data. This secondary data is data obtained from the results of reviewing library materials and various literature that is closely related to research materials to obtain legal materials. Secondary data in legal research are divided into three groups, namely primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques with literature studies. The data analysis technique in this study is a qualitative juridical analysis method. The qualitative approach is data obtained from literature research, then analyzed qualitatively to get clarity and answers to the problems studied in a research.

RESULT AND DISCUSSION

Notary is a legal profession and thus the notary profession is a noble profession (nobile officium), because the notary profession is very closely related to humanity. A deed made by a Notary Public can be the legal basis for the status of a person's property, rights, and obligations or a person's burden on an obligation (Anshori, 2009).

Profession is defined as a field of work based on certain skills (skills, vocational, and so on) education. Professional is defined as that concerned with the profession, requiring special intelligence to carry it out, requiring payment to do so (as opposed to observing) (Nasional, 2008): The elements of professionalism are (Kosasih & Haykal, 2021):

1. A job that requires expertise;
2. For it is necessary to get special exercises;
3. Earn income from it.

Thus, the profession means a job with special skills that requires broad knowledge and responsibility, which is devoted to the interests of many people, has an organization or professional association and gets public recognition and has a code of ethics (Yustica et al., 2020). Professional accountability is accountability to oneself and to society. Being accountable to oneself means a professional works with moral, intellectual, and professional integrity as part of his or her life. When professionals provide services, they must always maintain the noble ideals of the profession in accordance with the demands of their conscience obligations, not because they are just hobbies (Yustica et al., 2020).

Being responsible to the community means the willingness to provide the best possible service in accordance with the profession, without distinguishing between high-pay, lower or unpaid services and producing quality services, which have a positive impact on society. The service provided is not only motivated by seeking profit but also devotion to fellow human beings. Notary work takes precedence over remuneration (income). This means prioritizing what must be done, not how much payment is received. Client satisfaction takes precedence (Jurdi, 2022).

Professional attitude is also inseparable from an obligation of the profession itself. A Notary Public who is entrusted by the community has obligations regulated by UUJNP in Article 16 paragraph (1), including:

- a. Act trustfully, honestly, thoroughly, independently, impartially, and safeguard the interests of related parties in legal actions;
- b. Create a deed in the form of a Minuta Deed and save it as part of the Notary Protocol;
- c. Attach letters and documents and fingerprints to the Minuta Deed;
- d. Issuing a Grosse Deed, Copy of Deed, or Quotation of Deed based on Minuta Deed;
- e. Provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;
- f. Keep everything confidential about the Deed he made and all information obtained for the preparation of the Deed in accordance with the oath / promise of office, unless the law specifies otherwise;
- g. Bind the Deed he made in 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deed can be bound into more than one book, and record the number of Minuta Deeds, months, and years of manufacture on the cover of each book;

- h. Make a list of the Deed of protest against non-payment or non-receipt of securities;
- i. Make a list of Deeds relating to wills in the order of time of making Deeds each month;
- j. Send a list of deeds as referred to in letter i or a list of nil relating to wills to the center of the list of wills at the ministry that organizes government affairs in the field of law within 5 (five) days in the first week of each subsequent month;
- k. Record in the reportorium the date of sending the list of wills at the end of each month;
- l. Have a stamp or stamp that contains the state of the Republic of Indonesia and in the space surrounding it is written the name, position, and place of residence concerned;
- m. Read the Deed in front of the face in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the preparation of the will deed under hand, and signed at that time by the face, witnesses, and Notary
- n. Accepting apprentices of Notary candidates.

In addition to the obligations stipulated in the UUJN, the obligations of Notaries are also regulated in the Notary Code of Ethics, which are as follows (Suryani et al., 2020):

- a. Have good morals, morals, and personality;
- b. Respect and uphold the dignity and dignity of the Notary office;
- c. Safeguarding and defending the honor of the association;
- d. Act honestly, independently, impartially, full of responsibility, based on laws and regulations and the contents of the Notary oath of office;
- e. Improving the knowledge that has been owned is not limited to legal and notarial science;
- f. Prioritizing service to the interests of society and the country;
- g. Provide deed making services and services to other Notaries for people who cannot afford it without collecting honorarium;
- h. Establish one office at the place of residence and the office is the only office for the Notary concerned in carrying out the duties of the daily position;
- i. Install 1 (one) signboard in front of / in the office environment with a choice of sizes, namely 100 cm x 40 cm, 150 cm x 60 cm, 200 cm x 80 cm, which contains:
 - 1) Full name and legal title.
 - 2) Date and number of the last Appointment Decree as Notary.
 - 3) Place of position.
 - 4) Office address and telephone/fax number. The base of the board is white with black letters and the writing on the signboard must be clear and easy to read, except in the office environment it is not possible to install the signboard
- j. Attend, participate and actively participate in every activity organized by the association, respect, obey, carry out any and all decisions of the association;
- k. Pay association dues in an orderly manner;
- l. Pay mourning money to help the heirs of deceased colleagues;
- m. Implement and comply with all provisions regarding honorarium stipulated by the association;
- n. Carrying out the position of Notary Public especially in making, reading, and signing deeds is carried out in his office, except for valid reasons;

- o. Creating a sense of kinship and togetherness in carrying out the duties of the position and daily activities and treating each other well, respecting each other, respecting each other, helping each other and always trying to establish communication and friendship;
- p. Memperlakukan setiap klien yang datang dengan baik, tidak membedakan status ekonomi dan/atau status sosialnya;
- q. Treat every client who comes well, does not distinguish their economic status and/or social status:
 - 1) UUJN
 - 2) Explanation of Article 19 paragraph (2) UUJN
 - 3) Content of Notary oath of office
 - 4) Articles of association and bylaws INI
- r. Make deeds in the amount of reasonable limits to carry out laws and regulations, especially the Law on Notary Positions and the Code of Ethics.

Legal responsibility is divided into three types, namely civil law responsibility, criminal law responsibility, administrative law responsibility. Based on the above cases, the Notary's actions can be categorized as legal liability in the civil field originating from unlawful acts (Ola et al., 2017). Legal liability is liability with elements of error, willfulness and negligence as mentioned in Article 1365 of the Civil Code "that any who violates the law and brings harm to another person, obliges the person who caused the harm because of his fault to indemnify such" (Kie, 2007). So according to Article 1365 of the Civil Code, the definition of unlawful acts is an unlawful act committed by a person who because of his fault causes harm to others. Legal acts consist of 3 types according to legal science, namely (Fuady, 2002):

- a. "Intentional unlawful acts
- b. Unlawful acts without fault (without any element of willfulness or negligence)
- c. Unlawful acts due to negligence."

Most Notaries face lawsuits based on unlawful acts, because the name of the party who took the certificate is not listed on the receipt, so the party who took the certificate is not a party to the certificate custody agreement (privity of contract). Regarding unlawful acts is regulated in Article 1365 of the Civil Code, the elements of which include:

- a. "There is an act against the law
- b. There was an error
- c. There is a causal relationship between loss and deed
- d. There are disadvantages."

In the above case, the RR Notary should be responsible for everything that happens regarding the certificate entrusted to him, but this is unless the recipient of the entrustment does not have responsibility for events that cannot be ruled out (force majeure). However, there are different conditions where the RR Notary can be said to be less careful in returning the certificate entrusted to him. RR notaries can be sued in the general court in civil cases for unlawful acts (onrechtmatigedaad) for not returning land titles to their owners.

There are several reasons for Notaries to hold or entrust Land Rights Certificates, namely (Al Misbakh et al., 2019) :

- a. "To check with BPN

- b. The existence of Notary Honorium that has not been paid by the buyer and / or seller in accordance with what is agreed by both parties
- c. The developer entrusts a master certificate for the purposes (separation) if someone will buy land and buildings built by the developer concerned.
- d. The buyer has not fulfilled its obligation to pay in full the price of the land that is the object of sale and purchase”

The storage of title certificates over land by a Notary Public will cause an event of transfer of proof of ownership of title to land (Chairunissa & Putra, 2022).

Liability with an element of fault, especially negligence as contained in Article 1366 of the Civil Code, "everyone is responsible, not only for losses caused by deeds, but also for losses caused by negligence or intentionality, and absolute responsibility (without fault) as contained in Article 1367 of the Civil Code, "a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are his dependents, or caused by goods under his control” (Chairunissa & Putra, 2022). Notary action will be related to these elements, therefore an act of error and / or intentionality of the Notary that harms other parties in carrying out their work and position. Notaries are civilly responsible for their negligence and negligence, resulting in the transfer of title certificates to land belonging to the claimants into the hands of parties who are not. Individual liability is aimed at the return of civil losses of the parties in the form of civil sanctions. The sanction can be in the form of reimbursement of costs, compensation and interest which is the cause and effect received by the Notary for the claims of the faces who feel aggrieved. Reimbursement of costs, damages or interest must be based on a legal relationship between the Notary and the parties facing the Notary.

The Notary's authority in terms of storing or withholding the certificate of land rights is not further regulated in the UUJN, so that the return of the certificate must be in accordance with the subject matter in the Letter of Receipt that has been given, and the notary must return the land certificate to the owner if there is no legal action anymore.

Regarding government responsibility, the concept of personal error and misposition is known. Personal mistakes are those committed not related to public service but show the person's weaknesses, desires or passions and lack of caution or negligence. While office errors occur due to errors in the use of authority, and are only related to public services (Hadjon et al., 2010).

Based on the above opinion, it can be seen that in the case of Notary RR it is a personal mistake, namely lack of prudence or negligence in carrying out his position. So that this act can be based on Article 17 paragraph (1) letter i and paragraph (2), UUJN namely Notaries are prohibited: "doing other work that is contrary to religious norms, decency, or decency that may affect the honor and dignity of the Notary Office. Notaries who violate the provisions referred to in paragraph (1) may be subject to sanctions in the form of: a. written warning; b. temporary suspension; c. honorable dismissal; or d. dishonorable dismissal.

CONCLUSION

Based on the research conducted, it can be concluded that the Notary's responsibility for the loss of land certificates due to Notary negligence is civil liability. Notaries are civilly liable

for negligence and negligence in carrying out their duties. This civil liability includes the return of civil losses of the parties who feel aggrieved, such as reimbursement of costs, damages, and interest that are the result of the claims of the parties who feel aggrieved.

Notaries also have a professional code of ethics that regulates their duties and responsibilities. In carrying out their duties, Notaries must work independently, honestly, impartially, and with a sense of responsibility. Notaries must also be based on moral values and obligations, so that they can carry out their professional duties flawlessly professionally from the community. In the event of loss of land title certificates, the Notary Public must safeguard the interests of the parties concerned and be responsible for the documents deposited. In the event of negligence that results in the loss of the certificate, the Notary Public may be subject to civil sanctions in the form of reimbursement of costs, damages, and interest to the party who feels aggrieved. In this study, the method used is a normative research method or literature that emphasizes legal norms by analyzing related laws and regulations regarding the authority and responsibility of Notaries.

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