

NOTARY RESPONSIBILITY FOR GRANTING INCORRECT DATE ON AUTHENTIC DEED

Ni Putu Ayu Bunga Sasmita¹, I Wayan Novy Purwanto²

Faculty of Law, Udayana University

Email: niputuayubungas@gmail.com¹, novypurwanto17@gmail.com²

Abstract

An authentic deed that made by Notary may lose its perfection if the deed has defects in its form. This article examines cases by a notary that has granted an incorrect date on an authentic deed, as stated in the Court Decision Number 756/Pdt.G/2021/ PN Dps. The aim of this study is to identify the legal consequences of granting an incorrect date to an authentic deed and also the form of notary legal responsibility for granting an incorrect date on the deed that notary made. This article used normative legal research and the approach method used is a statute approach, conceptual approach, and case approach. The results showed that the act by Notary who granted an incorrect date on the authentic deed even though it had received approval from the parties was an "unlawful act" and the authentic deeds becomes degraded by barely having the evidence as a deed under the hand. Legal responsibility of a Notary can be viewed from civil, criminal and administrative aspects.

Keywords: Notary, Responsibility, Authentic Deed, Incorrect Date

INTRODUCTION

An agreement is made because of differences in interests between the parties. These differences generally begin with a negotiation process, and through it the parties will accommodate their interests to carry out certain matters. According to Article 1338 paragraph (1) of the Indonesian Civil Code that determines "all agreements made legally apply as laws for those who make them". It's mean if the parties declare that they promise and agree to bind themselves to be included in an agreement, which will be rising the rights and obligations for the parties. (Hernoko 2014)

In order to create legal certainty or legal defense for the parties, an agreement should be made in the form of a written agreement. Written agreements can be classified into 2 (two) forms, namely underhand agreement and authentic deed. Following of Article 1868 of the Civil Code, determine that "an authentic deed is an agreement whose form has been determined by law and made by an authorized public official, following the area of an authorized public official." Based on Article 1 point 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJNP), stipulates that "A notary as a public official who has the authority to do authentic deeds". With this authority, the Notary not only carries out the work mandated by law but also carries out a very important social function, especially within the scope of civil law for the society. (Victoria, Ariyana, and Arifani 2020)

Article 15 of UUJNP, stipulates that: "The Notary has the authority to make authentic deeds regarding all actions, agreements, and stipulation required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guarantee the certain date of making the deed, save the deed, provide Grosse, copies, and quotations of the deed, all of that as long as the making of the deed is not assigned or excluded to other officials or other people determined by law." From these provisions, the Notary own duties in making

an authentic deed are as officials who records the occurrence of an agreement among the parties, from the records therefore the agreement can be ensured its perfection. (Isnaini and Utomo 2019)

Notarial deed (a deed that made by notary) is accurate evidence of what was done or stated inside the deed. Article 1870 of the Civil Code determines that “an authentic deed has perfect evidentiary power for the parties, heirs, and those who receive rights from them”. An authentic deed may lose its perfection if the deed defect in its physical form or because is made by an unauthorized public official. However, it will still be recognized as an underhanded deed if it has been signed by the parties that stipulates in Article 1869 of the Civil Code (Anand 2018). To prevent unwanted things from happening, a notary should always stick to the laws and is also always obliged to act independently, impartially, honestly, impartially, and thoroughly and protect the interests including rights and obligations of the parties based on what is mandated in Article 16 paragraph 1 of UUIJNPP. If in the future there is an authentic deed that loses its authenticity, a notary must be responsible for the errors and omissions that a notary has made. (Suhardini and Sukarmi 2018)

A lawsuit was filed by I Nyoman S and I Made W against Mrs. AL and Notary S, as stated in the Court Decision Number 756/Pdt.G/2021/ PN Dps. It started on 23th December 2020, where I Nyoman S and I Made W borrowed funds from Mrs. AL with the agreed amount was Rp. 2,000,000,000, - (two billion rupiah) for 3 months with a guarantee of certificate of Property Rights Number 1533/Kelurahan Seminyak. Regarding that event, the parties agreed to make a Deed of Acknowledgment of Debt along with 4 (four) other additional deeds, namely Deed of Mutual Agreement, Deed of Sale and Purchase, Deed of Selling Authorization and then the Deed of Emptying Building that made by Notary S. In this case, the plaintiffs feel disadvantaged because the four agreement deed which are additional deeds to the Deed of Acknowledgment of Debt Number 6 dated 6th January 2021, were made by not complying with the regulations of the form and procedure of an authentic deed, and also made by not fulfilling the requirements for a valid agreement, violating the provisions applicable law (violating objective requirements) and by abusing circumstances/*misbruik van omstandigheden* (violating subjective requirements).

After examining witnesses, a legal fact was found in the trial process that there was deliberate action by a notary in granting an incorrect date on the authentic deeds he made. According to the case that has been described, it is necessary to conduct an in-depth study of legal issues in the Court Decision Number 756/Pdt.G/2021/ PN Dps regarding notary responsibility for granting incorrect date on authentic deed. To fulfill the purpose of this writing, this paper aims to identify the legal consequences of an authentic deed that contained an incorrect date and also the form of notary legal responsibility for give an incorrect date to the authentic deed.

To obtain data sources, articles that have similar themes such as this research as conducted by I Wayan Erik Pratama Putra, Luh Putu Sudini and I Nyoman Alit Puspadma in 2020 which discussed about “Notary Responsibilities on The Making of Deed with Double Number” with purpose of this research is to reveal the legal consequences if a double number occurs in a notarial deed and the responsibility of a notary for the drafting of a double number. In 2021 the article was conducted by Himawan Arifin regarding “Legal Protection

for Parties in Making Authentic Deeds from Legal Deviations by Notaries” with research purposed to review and analyze the legal protection for the victim who is harmed in making an authentic deed containing false information and the notary's responsibility in making the deed. Based on these studies, it is clear that there is no similarity in the focus of the study where the focus of the study in this paper is specifically examining the notary's mistake for giving incorrect date on authentic deeds.

METHOD

This article using normative legal research by identifying and reviewing the relevant laws and regulations regarding notary responsibility for granting incorrect date on authentic deed, as well as the results of research, assessments and other references related to this issue. The approach method used is a case approach, statute approach, and conceptual approach. This article uses document study techniques sourced from legislation and literature studies relevant to this research problem. The analysis techniques used in this writing are description and argumentation techniques.

RESULTS AND DISCUSSION

Legal Consequences of An Authentic Deed That Contained an Incorrect Date

Notary as a public official officer give authenticity to the deeds he has made regarding the actions, agreements and decisions of those who appear in front of a Notary. Authentic deed as an authorized product completed by a Notary can be classified into *relaas* deed and deed made in front of Notary (*ten overstaan*), commonly referred to as *partij* deed. In the *relaas* deed, the Notary writes or records everything that the Notary sees or hears himself directly from the parties. While a *partij* deed is a deed that the parties made and they want their statement written in the form of notarial deed and stated or explained by the parties themselves in front of the Notary. Through the notarial deed, as a subject in the deed the parties would like to guarantee their legal rights and legal obligations. (Purnayasa 2019)

In the making of notarial deeds both in the form of *partij* deed and *relaas* deed, the notary have responsibility so that the deed that the notary makes is authentic as stipulated by the legislations. The authority of a notary mandated by law to be able to make an authentic deed is a state policy that aims to create certainty, order and legal protection for the community, especially within the scope of civil law. With this authority, the notary has a position of trust. Not only because it is mandated by law, but an authentic deed is made by the will of the interested parties to formalize a legal act in an authentic deed as a means of proof. Article 164 Herzein Indonesia Sch Reglement (HIR) in conjunction with Article 1866 of the Civil Code stipulates that the form of evidence can be letter evidence, evidence of suspicion, witness evidence, and evidence of oath. As a letter of evidence, the notarial deed has perfect evidentiary power "obligatory evidence" (*Verpl icht Bewi js*). With this evidence power, notarial deed has 3 (three) kinds of evidence, such as.

1. Outward Evidentiary Strength

The outward evidentiary strength of a notarial deed can be seen from the outside that have the ability of the deed itself to prove its validity as an authentic deed and does not require

any other evidence. As an authentic deed, if seen from the outside (birth) and in accordance with the legal rules that have been determined regarding the terms of an authentic deed, then the deed is valid as an authentic deed, until proven otherwise.

2. Formal Evidentiary Strength

Formal evidentiary strength shows the deed as an official statement in writing of what the parties did and witnessed by the official concerned in carrying out his position. This proof can guarantee the parties regarding the date of the deed, the signature contained in the deed and the strength of this proof includes; the certainty the date in a deed, the identities of the people present, the place where the deed was made, and the validity of the signature contained in the deed.

3. Material evidentiary strength,

Certainty about the material of a deed is very important, the contents of the deed are considered to be proven as true against everyone who orders the deed to be drawn up as evidence against the authentic deed. The contents of the notarial deed have certainty as the truth, become valid evidence for and between the parties and the heirs and the recipients of their rights

The proving strength of the notarial deed is related to the notary position as a public official, which means the deed that the notary made contains actual statements from the parties supported by valid documents and witnesses who can be accounted for by the provisions of the applicable laws and regulations. (Burhanuddin 2021).

Article 1 point 7 UUJNP, states "Notarial Deed, hereinafter referred to as Deed, is an authentic deed drawn up by or before a Notary in the form and procedure stipulated in this Law." A notarial notary has to fulfill the requirements contained in Article 38 UUJNPP which regulates "the contents of an authentic deed must contain:

- (1) The beginning of the deed or head of the deed, this part of the deed contains:
 - a. The title of the deed;
 - b. The number of the deed;
 - c. The date of making the deed (hour, day, date, month, and year) and
 - d. The full name and domicile place of the Notary.
- (2) The body of the deed contains:
 - a. Full name, place and date of birth, nationality, occupation, position, position, place of residence of the appearers and/or the person they represent;
 - b. Information regarding the position of acting as appearers;
 - c. The contents of the deed which are the desires of interested parties; and
 - d. Full name, place, date of birth, and occupation, position, position, and place of residence of each identifying witness.
- (3) The closing of the deed contains:
 - a. Description regarding the reading of the Deed by the Notary;
 - b. Description of the signing and place of signing or translation of the Deed (if any);
 - c. Full name, place and date of birth, occupation, position, position, and place of residence of each deed witness; and

- d. Description of the absence regarding the changes that occurred in the making of the Deed or description of any changes that could be in the form of additions, deletions, or replacements and the number of changes.”

The provisions contained in Article 38 UUIJP above are a formal aspect of the Notary Deed, or in other words what has been stated in the UUIJP "must exist" in the deed without exception. This is in accordance with what is stated in Article 1868 BW "made in the form determined by law". If the formal aspects of the notarial deed are not fulfilled, then the deed is degraded into an underhanded deed (Marzuki 2018).

In addition to the provisions required in Article 38 UUIJPP, an authentic deed also must fulfill the provisions contained in Article 1320, which regulates the “legal requirements of an agreement that stipulates four conditions need to be fulfilled in an agreement is:

1. their agreement to bind themselves;
2. the ability to make an agreement;
3. a certain subject matter;
4. a lawful reason."

The 4 (four) conditions can then be classified into subjective and objective conditions. Terms agree and proficient in the agreement is a subjective requirement. Then, the objective requirement is the existence of a certain object and a lawful cause. If in the future an agreement can be cancelled with a decision by the court if the agreement doesn't fulfill the subjective requirements. And an agreement will automatically be considered as never existing and null and void if it doesn't fulfill the objective requirements (Erliyani 2020a). The elements in Article 1320 of the Civil Code are attached to each other so that they cannot be reduced or eliminated. All of these elements need to be fulfilled so that an authentic agreement or deed can be legally valid to bind the parties. If one of the elements is not fulfilled, the agreement is considered invalid according to applicable law and the parties cannot use the agreement as a legal basis to carry out what is the purpose of making the agreement (Akay 2019).

Article 48 UUIJP stipulates that the contents of an authentic deed are prohibited from being changed by replaced, augmented, crossed out, inserted, deleted and/or written overlapping. In practice, a notary also can make a mistake in the process of making an authentic deed by errors in writing or typing in an authentic deed. According to Article 51 UUIJP a Notary has the authority to make corrections to writing errors and/or typographical errors contained in the minutes of the signed deed. The correction process must be included in the minutes and provide a note of the correction on the minutes of the original deed by mentioning the date and number of the deed of the correcting minutes where this must be submitted to the parties.

An authentic deed theoretically is a letter or deed which was deliberately made officially for the purpose of proof and it must made based on the provisions that stipulated by law. A deed made by an official without authority and without the ability to make it or does not meet the requirements, cannot be considered as an authentic deed, but only has the power as an underhand deed. It means authenticity or not of a notarial deed is not enough if the deed is only made by or in front of the Notary (Anshori 2009). Regarding the cases that

committed by notary who granting incorrect date in the authentic deed that he made as stated in the Court Decision Number 756/Pdt.G/2021/ PN Dps. After examining the witnesses, based on the testimony by all the witnesses, the signing of the five deeds which were not the actual dates occurred with the knowledge of all parties and based on the reasons presented in the court, Notary S claimed that he didn't want the five deeds to be sign if the loan transfer had not been made, while at the time when the deed was to be signed on 5th January 2021 at 16.15 WIB it's not possible to transfer the loan since it was already evening, and it was mutually agreed that the signing would still be on 5th January 2021, but the five deeds are dated according to the date the funds were disbursed at 6th January 2021.

Based on the conditions above, it has been clearly stated by the articles above that the notary is to make a deed regarding a legal action, such as an agreement (for example), then the function of the notary in the agreement is as an officer who records the occurrence of an agreement, then the record (deed) can be ascertained to be perfect evidence. In carrying out his authority to make a deed that has perfect (authentic) evidentiary power, the responsibility assigned to the position of notary by law is to ensure that the deed he makes, both the form and the procedure for making it complies with the provisions of the applicable law.

The act by Notary S who included an incorrect date on the authentic deed even though it had received approval from the parties was an "unlawful act" because it violated the provisions of Article 38 Paragraph (2) letter c UUJNPP and Article 15 Paragraph (1) UUJNPP. This action can't be seen as negligence (*culpa*) which results in "writing errors" or "typing errors" which can be tolerated as stipulated in Article 51 UUJNPP. Due to the legal facts, it was found that actions by Notary S were carried out based on awareness and his own will to do, then the mistake must be declared as a violation because the act contained the "intentional" matter. As it has been proven that the five deeds have been contained with an incorrect date, then as stipulated in Article 41 UUJNP the five deed only have the power of proof as underhanded deed.

Legal Responsibility of The Notary for Granting an Incorrect Date on An Authentic Deed

Article 1 point 1 UUJNPP and Article 1868 of Civil Law stated that a Notary is a public official who is authorized by law to make authentic deeds in the form determined by law so the parties will have perfect evidentiary power. Regarding the regulations above, it has been emphatically stated that authority of the Notary is to make a deed regarding a legal action, such as an agreement (for example), then the function of the Notary in the agreement is as an officer who records the occurrence of the agreement as an officer who records the occurrence of the agreement, whereby the notary records the agreement, then the record (deed) can be ascertained to be perfect so that it becomes strong evidence that the agreement has been made.

The authority to be capable for making the authentic deed is a state policy for Notary to provide the community legal certainty and protection, especially in the scope of civil law. With this authority, the Notary has a position of trust. Not only because it is mandated by law, but an authentic deed also made to formalize a legal act in an authentic deed as proof

by the will of interested parties. Notary responsibility arises from the obligations and authorities given by the law. However, notary responsibility will also occur if there is a violation of negligence or intention by Notary in the authentic deed making (Erliyani 2020b).

In the future, if there is a legal dispute regarding the deed made by the Notary, Notary is obligated to be responsible. Responsibilities by the Notary is based on fault of liability. Notary must be responsible if the deed he made contains an error or intentional violation that happened by Notary itself that arises in connection with the duties and obligations imposed on the notary as stated by the law. If the parties declared false statement in the authentic deed, the notary can't be held a responsibility because the notary only records what was stated by the parties in the deed. That's means the error or violation occurs from the parties appearing as long as the Notary carries out his authority following the law (Afifah 2017).

The action of Notary S who has been proven in court to have intentionally committed the act of including an incorrect date on an authentic deed was an unlawful act. Based on Article 41 UUNPP, violating Article 38 UUNPP by granting an incorrect date to the five deeds made by Notary S will result in the five deeds no longer recognized as authentic deeds. The consequences in this problem are the deeds becomes lowered by only having the power of proof as an underhand deed (made without the presence of a Notary or any other legal official), it means the notarial deed that was recognized originally by law as an authentic deed will diminish in authenticity.

Based on Article 1365 of the Civil Code mentions that "every act that violates the law and causes harm to other people obliges the person who caused the loss because of his mistake to compensate for the loss". The deed that Notary S made has fulfilled all the conditions in the Article above, because his actions related to the inclusion of an incorrect date in an authentic deed have violated the provisions of Article 15 Paragraph (1) UUNPP and Article 38 Paragraph (2) letter c UUNPP and this results in losses suffered by the parties because it does not guarantee the certainty of the date and time in the making of authentic deed and as a result, the deed is only recognized as a deed that has the power of proof of a deed under the hand (Poea 2020).

Regarding losses in acts of violating the law in civil terms, the Notary can be sued to compensate for the losses of the parties in the form of material losses and immaterial losses. Losses in the form of material losses, namely losses whose amount can be counted, while immaterial losses, the amount cannot be counted, for example, his reputation is tarnished or can result in death. Based on Notary S mistake, he can be held responsible for compensating for the losses incurred from his actions and the parties are entitled to have compensation.

In addition to forms of civil liability, a notary can be asked for accountability by imposing criminal sanctions. According to Habib Adjie, in criminal cases notaries are often charged with articles in the Criminal Code, which are as follows:

- a. Article 263 paragraphs (1) and (2) of the Criminal Code regarding making fake/falsified letters and using fake or forged letters.
- b. Article 264 of the Criminal Code regarding forging authentic deeds
- c. Article 266 of the Criminal Code regarding ordered to include false information in an authentic deed.

- d. Article 55 Jo. Article 263 paragraph (1) and paragraph (2) of the Criminal Code or article 264 or article 266 of the Criminal Code regarding doing or ordering to do and participate in doing.
- e. Article 56 paragraph (1) and paragraph (2) Jo. Article 263 paragraph (1) and paragraph (2) of the Criminal Code or article 264 or article 266 of the Criminal Code regarding Assisting in making fake or forged letters and using the fake or forged letters (Adjie 2008).

Regarding criminal sanctions, this is not regulated further in the Notary's Position Regulations (UUJNP). If a notary committed criminal violation, they might be subject to criminal sanctions in the provisions of the Criminal Code with some restrictions:

- a. There is a legal action that is deliberately and consciously carried out by a notary against the outward, formal, and material aspects of the deed and it is planned that the deed will be drawn up before a notary or by a notary in agreement with the appears or parties as committing crime basis;
- b. The legal action of a notary in the making of a deed is not based on or not in accordance with the Law on the Position of a Notary and fulfill the elements in the provisions of the Criminal Code; and
- c. The Notary Supervisory Board assesses whether the notary legal action is in accordance with the provisions of the Notary Law.

Furthermore, can also be responsible for administrative accountability. Administrative sanctions enforced on the Notary who violate UUJNP are in the form of written warning, temporary dismissal, respectful discharge and dishonorable dismissal. Administrative sanctions can be imposed on a Notary for violating the following articles: Article 7 paragraph (1), Article 16, Article 17, Article 19, Article 32, Article 37, Article 54, Article 58 and Article 59. Administrative sanction arrangements in UUJNP, namely by placing a written warning in the first order of imposing sanctions is a warning to the Notary from the Supervisory Council which if not complied with is followed up with temporary dismissal, if sanctions like this are not complied with by the Notary concerned, then the following sanction may be imposed tiered.

Administrative sanctions regulated in the provisions of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notary are distinguished by:

- a. Reparative sanctions, namely the use of sanctions with the aim of correcting an act of violation of the rule of law.
- b. Punitive sanctions, namely an additional burden and an action that can give fear to the offender, in this case, can be in the form of a strict reprimand.
- c. Regressive sanctions are defined as sanctions as a risk or consequence of non-compliance with the laws.

CLOSING

Conclusion

Legal consequences of an authentic deed that contained an incorrect date is will cause the deed to be no longer recognized as authentic and lowered by only having the power of

evidence as an underhanded deed. The act of a Notary who deliberately includes an incorrect date on an authentic deed he made is against the law. Such actions cannot be viewed as negligence (*culpa*) which results in writing or typographical errors that can be tolerated by UUJNP.

Legal responsibility of a Notary can be viewed from civil, criminal and administrative aspects. Civilly, a notary can be sued for compensation. Furthermore, a Notary can also be held criminally responsible if a Notary is proven to fulfill the criminal elements listed in the Criminal Code. Notary also can be held accountable from an administrative perspective if a Notary is proven to have violated Article 85 UUJNP which regulates obligations and prohibitions for a Notary in carrying out his position.

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