

The Responsibility of Notary Who Misused the Signature Which Was on a Blank Form (Case Number: 2564K/Pdt/2019)

Dr. Gunawan Djayaputra, S.H., M.H.,CN^{2,*} Ivana¹

¹ *Mahasiswa Program SI Fakultas Hukum Universitas Tarumanagara*

² *Dosen Fakultas Hukum Universitas Tarumanagara.*

**Corresponding author. Email: gunawandjayaputra@gmail.com*

ABSTRACT

Notary is a Public Official individual who is entrusted by the Government to make authentic deeds. Every deeds produced functions as a true form of verification of legal actions. Each certificate that is made by Notary must be made based on the regulations of the law. The authentic deeds can be used as evidence in case of dispute based on the ordinance. The Journal with "Pertanggungjawaban Notaris terhadap penyalahgunaan tanda tangan di atas blangko kosong (Studi kasus : Putusan Nomor 2564K/Pdt/2019)" as the title mostly talks about how each Notary should be responsible if while doing their crucial job, mistakes that cause loss happened. The method used in writing this journal is normative and the method used are statute and case approach. The main problem of this writing mostly talks about: How should the Notary be responsible if the Notary uses blank form while doing his job?" in article 16 the regulations of notary Nomor 2 of 2014, its written that every Notary should read the deeds in front of the parties. Which means what he done is absolutely against the rule. From the research, The responsibilities Notary could bear consist of responsibility in administrative, civil dan criminal. Secara administratively, the councils should first examine the case before asking for responsibility. Examinations are done by the councils which was first chosen by the minister. Civilly, it is based on articles 1365 KUHP data. then, criminally it is based on articles 263 KUHP.

Keywords: *Notary, Responsibility, Blank form*

1. INTRODUCTION

1.1. Latar Belakang

The Unitary State of the Republic of Indonesia is a country whose interactions and actions cannot escape from the passing laws, for that reason, in Indonesia there are public officials appointed to carry out work related to these matters, especially in legal actions. There are 3 (three) positions that can be classified as general officials in Indonesia, the first is PPAT, the second is auction officials and the third is Notary. The three positions have authority in their respective fields in accordance with the provisions of the applicable law related to the position and if carried out in accordance with the provisions of the Act, each product issued by the three positions above will have legal force and can be held liable. . Notary is a public official who has the authority to make an authentic deed and has other

authorities as stipulated in the Act. Notary Public is also a profession that carries a responsibility and is based on trust, so it is very important in carrying out the duties of its official, Notary must have integrity and honesty and good prudence. Broadly speaking, the Notary has the duty to make an authentic deed regarding every act, agreement or stipulation that has been regulated by the Act. In carrying out its official duties, there are obligations and prohibitions regulated in Law no. 30 of 2004 concerning the position of Notary Public and Law no. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning Notary positions and Notary Professional Ethics, EXTRAORDINARY Congress of the Indonesian Notary Association, Banten, 29-30 May 2015. In accordance with a quote in the book Busyra Azheri which said that "There is no authority without responsibility "which means means there is no authority without accountability, notary work which contains an important authority, certainly burdened with a big responsibility, both civil, administrative and criminal.

Responsibility is a term used to determine the meaning of an obligation to bear and or bear a thing that happens or is

experienced in life. The form of accountability also determines a person's quality of life and serves as a benchmark for the integrity of the person who bears those responsibilities. In terms of civil law, civil liability can be interpreted as a burden obtained to be borne due to an illegal act better known as the PMH (Onrechtmatige daad) or the existence of an act of Default (Ingkar promise) which generally causes a loss for the community.

Notaries have the obligation to be trustworthy, honest, independent, impartial and safeguard the interests of the parties involved in a legal action. Other than stated that Notaries are required to provide legal services in accordance with the provisions of the Act, unless otherwise specified. In Notary Professional Ethics article (3) points 1-6, it is stated that a notary public should have good character, morals and personality. In the following points, it is emphasized again that a notary public has an obligation to uphold the dignity and position of his office through his actions that are independent, impartial, honest, thorough and full of responsibility. In writing this legal article, the author takes the case of the decision no. 2564K/PDT/2019/Bpp as a reference about the use of blank blanks in Notary office duties. The responsibility that is borne by a notary in carrying out their duties, especially in providing legal services and counseling must be in accordance with applicable law and uphold the Professional Ethics Law on Notary Position and pay attention to the applicable Laws related to the deeds he made. Nevertheless there are still notaries who carry out their official duties not in accordance with the Law which results in losses suffered by one of the parties to the loss of public trust in the position of the Notary himself.

1.1.1. Formulation of the problem

Based on the description above, the authors are interested in making a formulation of the problem namely How is the notary's responsibility for misuse of signatures on blank blanks in CASE STUDY: NO. 2564 K / PDT / 2019?

2. DISCUSSION

Hans Kelsen argues in his theory of legal liability, that a person has legal responsibility for a particular act or that he bears a legal responsibility, meaning that the subject has responsibility for sanctions in the event of an act that takes place. Then Hans Kelsen again argues that responsibility consists of 4 things, namely:

1. Individual Responsibility, namely an individual is responsible for violations committed by his own diir
2. Collective responsibility, this means that an individual is responsible for the actions of another person

3. Liability is based on mistakes, which means an individual must be held responsible for something intentionally and incur a loss

4. Absolute liability, which means that an individual is responsible for committing an offense that is not expected or intentional.

Theory of Responsibility focuses more on the meaning of the responsibility itself, which is born from positive law and the provisions of the applicable legislation, so that when interpreted, the meaning is liability, as a concept relating to the legal obligations of someone who has responsibility for a certain act which sanctions may be imposed in the case of the act.

In this case, there was misuse of the signature on the blank blank carried out before the Notary. If elaborated, the chronology of the case is that this case began when Denny Trisana who lives at Jalan S. Parman no. 28 RT.14, Kelurahan Gunung sari ulu, Central Balikpapan District, City of Balikpapan, has a 150M2 plot of land on which a building in the form of a house is located on Jalan K.O. Balikpapan Regency no. u-04, RT 38, Kelurahan Sepinggan Baru, Balikpapan Selatan District, Balikpapan City.

On March 27, 2015, Ms. Denny Trisana made a loan to Ms. Yenny Setiawati having her address at Jln. APT Pranoto No. 16, RT 039, Kelurahan Gunung Sari Ilir, Central Balikpapan District, City of Balikpapan. The parties reached an agreement with the details of providing a loan of money to the Plaintiff in the amount of Rp 100,000,000 (one hundred million rupiah) and it was agreed that the loan interest would be 10% per month and Notary fee of 10% of the total withdrawal of funds. The duration of the loan is for 3 (three) months. For this loan, the Plaintiff gave a guarantee for the Right to Build No. certificate. 3321 / Kel Sepinggan with a land area of 150 M2 along with a permanent residential building above it located on Jl. K. Balikpapan Regency N0 U-04 RT 38 Sepinggan Baru Village Balikpapan Selatan District Balikpapan City.

The loan repayment was carried out on March 27, 2015 and at the time of the payment, the interest calculation for the first month and notary fees was immediately deducted by Rp. 25,000,000 (twenty five million rupiah) - so Br. Denny only received Rp. 75,000,000 (seventy-five million rupiah). Then the seventy-five million rupiah was paid through Bank transfer of Rp. 40,000,000 (forty million rupiah) and cash payment of Rp. 35,000,000 (thirty-five million rupiah) which was submitted on March 28, 2015.

At the time of the loan repayment that took place at the residence of Ms. Yenny Setiawati was present Notary Charles Haposan Purba. Although there is urgency in the transaction, the Notary is willing to help, even though the documents have not been prepared at that time. Notary Charles Haposan promised to print a debt agreement, so that the Plaintiff was presented with 3 (three) copies of the blank blank intended to make the agreement. , so to make it easier, it was agreed that the Plaintiff would sign 3 copies of blank blanks, and the deed would be made the following morning deed of debt agreement. without feeling suspicious, the Plaintiff signed the blank form. How shocked, then the Plaintiff was told by Notary Charles Haposan Purba that the blank blank that the Plaintiff signed turned out to be in the

form of a "Purchase and Purchase Agreement" between the Plaintiff and Defendant I for the Certificate of Right to Building N0. 3321 / Ex. Sepinggan and one house above it. Ms. Yenny then carried out the name of the debt collateral, even though Ms. Denny will pay off his debt at that time. As a result, according to witness Jaka who is a neighbor of Ms. Denny, Ms. Denny was forced to vacate the house because of Ms. Yenny brought in 20 people along with security and security personnel in the complex to assist in the execution of the evacuation of the house located on Jl. K. Balikpapan Regency N0 U-04 RT 38 Sepinggan Baru Village Balikpapan Selatan District Balikpapan City. So with forced conditions, Ms. Denny emptied the house.

As a result of these actions, Ms. Denny Trisana filed a lawsuit against Ms. Yenny and Notary Charles Haposan Purba with case number 104 / Pdt.G / 2016 / PN.Bpp, then Ms. Denny was defeated at the District Court's decision, and he filed an appeal with case number Number 52 / Pdt / 2018 / PT.SMR and Kasasi with Number 2564 K / Pdt / 2019, where the decision of the judge at the Appeal and Cassation level overturned the decision of the Bandung District Court judge and strengthen it.

Before discussing the procedure for making an agreement / engagement deed the researcher will first discuss who is a notary, what are his obligations and what are his authorities and what are the prohibitions. We will briefly describe who the notary is.

Notary is a public official appointed by the government to make an authentic deed which becomes his authority under UUJN (Article 1 number 1 UUJN) as well as other laws and regulations. Authentic deed is a deed made before a notary based on the Act (Article 1 adopts 7 UUJN). The authority of a notary can be seen in Article 15 of the UUJN. Notary obligations can be seen in Article 16 UUJN, Article 37 paragraph (1) UUJN. The prohibition on notaries can be seen in Article 17 of the UUJN. If a notary public wants to make an agreement deed that will be made authentically, the notary must first listen to the problems faced by the parties and the wishes of the parties, because every agreement that will be made by a notary will have different problems and the title of the deed that will be made .. Because the deed made before a notary has a perfect proof of strength that cannot be denied by the parties, after hearing the story or problem faced by the parties, the notary may provide legal counsel (Article 15 paragraph 2 letter e UUJN) to the parties . But the legal counseling given by a notary is not the personal interest of the notary, but solely for the benefit of the parties because one of the duties of a notary is to be neutral (not taking sides), conscientious, cautious, etc. (Article 16 paragraph (1) letter a UUJN). Legal counseling provided by a notary must be in accordance with applicable law in Indonesia.

After the notary gives legal counseling to the parties and they understand and understand the legal counseling given by the notary public and they agree to the legal counseling, the notary will ask for the data and documents needed to make the deed they want. One of the data requested is the identity of each of the parties facing. The use of the identity data of the parties is needed to find out whether the parties are entitled / eligible to make the deed (Article 39 and

Article 40 paragraph (2) UUJN), because each deed that is made automatically will bind the parties who made it but indirectly also binds the parties third in this case the heirs if one of the tappers dies), as well as other supporting documents needed where all of them will be poured into the form of an authentic deed. A notary must make an authentic deed must be in accordance with the actual conditions according to the problems faced by the parties and pour it into the deed with "what is" not "what is" from the deed he made it. Basically, there are two types of notarial deeds, namely the notarial deed and the party deed. The point is that the Deed is a notarial deed made by a Notary for what the Notary witnessed and heard.

After an authentic deed is made by a notary in accordance with Article 38 of the UUJN, then the notary reads the deed he made before the parties facing witnesses (at least two witnesses, may be more if desired by the party or parties) (Article 40 and Article 44 paragraph (1) UUJN) but a notary may also not read the deed if the parties wish it (see Article 16 paragraph (7) UUJN). If the notarial deed has been read by the notary public and there is a party who has objected to the contents of the deed (one or several contents of the deed) made and read by the notary public, then it can be negotiated or refounded by the parties to find a middle ground. A notary may not intimidate that the sentences that have been made and stated in the deed must be used, because this is feared will cause a notary alignment to one of the parties. If there is a change in words or sentences then the notary makes the change must be made before the parties (Article 48 paragraph (2) UUJN).

After the deed was made and in accordance with the wishes of the parties facing the agreement, the deed was signed (Article 44 UUJN). After the deed is signed and fingerprinted by the parties (Article 16 paragraph (1) letter c of the UUJN), the notary issues a copy of the same certificate that reads in accordance with the minutes of the deed (Article 16 paragraph (1) letter d of the UUJN and Article 54 paragraph (1) UUJN).

Criticizing article 16 paragraph (1) letter m Law no. 2 of 2014 concerning amendments to Law no. 3 of 2004 concerning the Position of Notary that reads that the Notary is required to read the contents of the deed in front of the parties with at least two witnesses. The blank blank here becomes a media in carrying out office duties under the pretext of urgency and trust of the parties. However, it should be noted that the Law of the Position of Notary does not adhere to or mention the use of blank blanks

According to Dr. Tjempaka, S.H., M.H., M.kn. Notaries who use blank blanks as media in carrying out their official duties must be held accountable for their actions because they do not meet what is stipulated in the Law and the Code of Ethics.

the act of using blank blanks as a media is not permitted because blank blanks which then give birth to a deed are not read out in front of the parties and it is probable that in the future, it will harm the wishes of one of the parties. Signing blank blanks is certainly contrary to these provisions, because in blank blanks, the Notary can abuse his authority by filling in something that is not in accordance with the wishes of the addressee later, as in the case investigated by

the author. Then regarding other notary obligations in accordance with the Law of Notary Position, are mentioned in article 16 paragraph (1) letter a of Law no. 2 of 2014 concerning amendments to Law no. 3 of 2004 concerning the Position of Notary that the Notary has the obligation to act trustfully, honestly, thoroughly, independently, impartially, and safeguarding the interests of parties involved in legal actions. This is due to the notary in making an authentic deed (Article 1 aya (t 7) UUN) will be established or there is a legal relationship between the notary and the parties facing. The legal relationship between the notary and the parties is because the deed made by a notary is an authentic deed that has a notary extension in making the deed and if necessary as proof then the deed is categorized as a perfect proof. When the parties come to the notary and tell the problem and so that the problem can be formulated or poured into the deed and then the notary makes a deed at the request or the wishes of the tappers, then in this case provides a basis for the notary and the tappers a legal relationship has occurred. Therefore, the notary must guarantee that the deed is made according to the determined legal rules. So that the interests of the parties are protected by a notarial deed. with such a legal relationship, it is necessary to determine the position of the legal relationship which is the beginning of the notary's accountability. The use of a blank form involving a notary public, then the registrants only need to sign on a stamp where the contents of the deed / agreement will be fully entrusted by the notary, it is feared that someday there will occur or legal issues arise between the tappers who can ensnare a notary because he has prepared or used blank blank. The parties may say (to protect themselves) that the contents of the deed made by the notary are unknown to them, they only sign on blank paper (blank blank) that has been stamped while the contents of the deed they do not know at all (this matter indeed in accordance with the facts that they know). If this happens then the deed made by a notary can be degraded into a deed under the hand or null and void by law, such as the case of the position appointed by the author.

The assignment of responsibility for carrying out the duties of a Notary Public is regulated in article 65 of Law No. 30 of 2004 concerning the Position of Notary Public. Which states that Notary, Substitute Notary, Special Substitute Notary, and Temporary Notary Officer is responsible for any deed he makes even though the Notary Protocol has been submitted or transferred to the depositor of the Notary Protocol.

Abul Kadir Muhammad put forward theories related to responsibility in actions against the law, the theories are described as follows:

1. Tanggungjawab akibat adanya suatu perbuatan melawan intentional tort liability, the defendant must carry out such an act which then results in a loss to the plaintiff.
2. Liability due to unlawful acts committed due to negligence (Negligence tort liability)
3. Absolute responsibility resulting from acts against the law, without questioning mistakes, whether intentionally or unintentionally committed (Strict liability)

In general, legal liability encompasses responsibilities in the field of Public law, namely the responsibility of State Administrative Law and Criminal Law and responsibility in the field of Private law, namely Civil Law responsibility. All three have a considerable responsibility weight.

1. Legal Responsibility of State Administration.

Basically, the accountability of the state administration has two of the most important benchmarks. The first is whether an authority has been carried out in accordance with the applicable laws and regulations and the second, whether an act is in accordance with and based on AAUPB (General Principles of Good Governance)

2. Criminal Liability

The term criminal law in a foreign language is known as *toereken-baarheid*, criminal responsibility or criminal liability. Criminal liability is intended to determine whether a person can be held accountable for something he has done. Quoted from Article 27 of the Criminal Code concept of 1982-1983, criminal liability has the meaning that the passing of objective reproach exists on criminal acts based on positive law, objectively there is to the maker who fulfills the requirements to be subject to a crime because of his actions. This reproach is based on being a criminal offense which gives birth to a legal consequence of legal actions. Objectively, these actions should be criticized based on the Law.

3. Liability in Civil Law.

Broadly speaking, there can be two types of civil liability based on the Law of Engagement. Namely:

- a. Legal liability due to contractual relationship / agreement (Privity of contract) and
- b. Responsibilities that are born because of the law. The responsibilities that are born due to the Law contain two things namely:

- 1) Responsibilities that arise due to the Act alone
- 2) Responsibilities that are born as a result of people's actions, where the actions can be in accordance with the law (halal acts) or acts that are against the law. That responsibility does not only encompass itself, but also every object that feels under its authority, in accordance with Article 1367 of the Civil Code.

In civil liability mistakes can include every act that results in harm to others so there must be a compensation resulting from that act. (Article 1365 Civil Code) and not only regarding losses caused, but also must be held responsible for his negligence / careless attitude he did. (Article 1366 of the Civil Code).

Apart from that, there is the *Fautes Personelles Theory*, which is a theory which states that the loss to a third party is a burden on the authorized official who because of his actions has caused a loss. This burden of responsibility is borne by humans as individuals.

The Notary Liability can be described as follows:

1. Administrative liability

In carrying out the duties of the Notary Position, each Notary who has been sworn in and entrusted by the Government will still be supervised by the Minister who then forms the Supervisory Council. In article 68 of Law no. 30 of 2004 Regarding the Position of Notary Public, it is

stated that there are 3 Types of Board of Trustees that supervise the performance of Notaries Administrative The first is the Regional Supervisory Council (MPD), the second is the Regional Supervisory Council (MPW) and the last is the Central Supervisory Council (MPW). The duties and authorities of the three also differ. The examination of the Notary is conducted in a hierarchical and hierarchical manner and the severity of sanctions is determined after further inspection by the Supervisory Board. In the MPD procedure there are usually 3 elements, there are elements from the Notary, there are Academics and there are elements from the government. If you get a report, the report will immediately be examined and carried out a review or evaluation. Then after that the Notary will be summoned and examined for a hearing at the MPD (Regional Supervisory Council). In UUJN administrative sanctions start from the lightest, namely reprimand, suspension and the last can be dismissed. For the 6-month suspension that has the authority is MPD, for the 6-12 month suspension that has the authority is MPW (Regional Supervisory Council) and above that, the authority is held by the MPP (Central Supervisory Council). If it reaches the point of termination of the position, the authority will be handed over to the Minister of Law and Human Rights. Granting Notary is done by MENKUMHAM by first going through the inspection process. Apart from that, there is an Honorary Board that also supervises the performance of a Notary Public when a Notary commits an offense will be subject to sanctions. In accordance with Article 6 Paragraph (1) Code of Ethics of Notary Congress EXTRAORDINARY Indonesian Notary Association, Banten, May 29-30 2015, namely for members who violate the code of ethics may be subject to sanctions in the form of:

- a. Reprimand;
- b. Warning;
- c. Suspension (temporary dismissal) of membership of the association;
- d. Onzetting (dismissal) from membership of the association;
- e. Disrespectful termination of association membership.

In Article 6 Paragraph (2) of the Notary Ethics Code, the imposition of sanctions is adjusted to the quantity and quality of violations committed by the member.

2. Civil Liability

Referring to the realm of Civil Law, as has been decided by the Judge in decision no. 2564K / PDT / 2019, that the Notary has done Unlawful Acts so that when referring to the Civil Code there is Article 1365 of the Civil Code.

In this case the Notary is obliged to compensate for the losses incurred by his actions, both materially and immaterially. This responsibility is based on the mistakes of someone who cause a loss for others.

3. Criminal Liability

Seeing from the realm of Criminal Law, before the imposition of liability, it needs to be reviewed whether an

act can be categorized as a criminal offense or not. There are two criminal elements, the first is the Subjective element and the second is the Objective element. Referring to the case raised for scrutiny in writing this journal, the researcher saw an intentional element carried out by Notary Public, Jo. Law no. 2 of 2014 concerning Amendment of Law no. 30 of 2004 concerning the Position of Notary Public and also the Notary Ethics Code. The notary who has ordered the signing of the blank blank violates the articles contained in the Criminal Code, namely:

a) Article 263 of the Criminal Code, making fake letters or falsifying letters that can give rise to rights, commitments or release of debts, or are intended as evidence of something with the intention to use or order others to use the letter as if the contents are true and not falsified, threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years;

b) Article 56 Paragraph (1) & Paragraph (2) Jo. Article 263 Paragraph (1) & Paragraph (2) of the Criminal Code or Article 266 of the Criminal Code, which is to help make fake / or forged letters and use fake / forged letters;

c) Article 52 of the Criminal Code If a public servant (abtenaar) violates a special obligation in his office because of committing an act that can be convicted, or when committing an act that can be convicted, or when carrying out an act that can be convicted using power, opportunity, or effort obtained because of his position, then the criminal may be added a third.

3. CLOSING

3.1. Conclusion

In carrying out his duties, the Notary must heed the applicable rules, uphold the Law and the dignity of the Notary Public. More specifically, this matter is regulated in article 16 letter (a) of Law no. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, that the Notary has the obligation to be trustworthy, honest, independent, impartial and safeguard the interests of the parties involved in a legal act. Apart from that, it is mentioned again in letter (l) related to the rules for Notaries in making the deed, that is, the Notary is obliged to read the deed in front of the registers attended by at least 2 (two) witnesses and signed at the same time by the registrar, witnesses, and Notary Public . If the Notary public

uses blank blanks in the practice of his position, surely this is not in accordance with the above article, because blank blanks cannot be read. Another thing that can happen is that the wishes of the parties cannot be realized properly due to the use of the blank blank. The other negative side of the use of blank blanks is that they can be detrimental to the Notary himself. Due to the legal relationship between the notary and the parties who in the future can become a boomerang for the notary himself if there are legal problems.

Reviewing the accountability side of the Notary, the Notary may be charged responsibility for:

Administrative Responsibility. Administrative responsibility shall be borne by the Notary if in carrying out the assignment given by the State, is violated. This is related to article 16 of the Notary Position Law no. 30 of 2004 concerning the Position of Notary Jo. Law no. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary Public. The use of blank blanks in Notary practice is subject to sanctions according to the results of the inspection conducted by the Supervisory Board appointed by the Minister. An examination will be carried out after reporting and will be reviewed whether the error is true. Apart from the Board of Trustees, there is an Honorary Board which is supposed to oversee the work of the office of the Notary Public.

Then Civil Liability. In the realm of Civil Law, that is because the Notary has done Acts Against the Law in accordance with Article 1365 of the Civil Code, the form of responsibility is liability based on mistakes made consciously, so in this case the Notary is obliged to provide compensation caused by the act; both materially and immaterially.

The latter is a criminal liability because it violates Article 263 of the Criminal Code, Article 264 Paragraph (1) number 1 of the Criminal Code, Article 266 Paragraph (1) of the Criminal Code, and 52 of the Criminal Code, in addition to that the Notary has also carried out abuse of power and the penalty is criminal imprisonment.

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B. Peraturan Perundang-undangan: