



Analysis Of The Notary's Responsibilities For The Storage Of Electronic Deed Minuta

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ARTICLE HISTORY

Received: 30-09-2023

Accepted: 05-12-2023

Published: 29-12-2023

ARTICLE LICENSE

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ABSTRACT

The role and authority of notaries who keep electronic minutes are often problematic. In practice, storing deed minutes electronically has obstacles and benefits. This research aims to determine and evaluate the process and obligations of Notaries in storing electronic deed minutes. The research methodology used is a sociological and legal research approach. Descriptive analysis is the analysis technique used in this research. Primary data used in this research includes the 1945 Constitution, Law No. 2 of 2014, the Mortgage Rights Law, the Civil Code, and the Criminal Code. Apart from that, secondary data such as books and supporting documents are also used. Research data was collected using interview techniques and studying documents or library materials. Research findings indicate that electronic deed minutes can be stored, as some laws allow it. To store deed minutes electronically, the minutes must be original and must be created and stored using conventional methods.

Keywords: Responsibilities, Minutes of Deed, Notary

1. Introduction

The notary profession has a long history in Indonesia, since the Dutch colonial era, whose task was to ratify deeds in the trade sector. The rules governing these powers are stated in Law Number 2 of 2014 which amends Law Number 30 of 2004 concerning the Position of Notaries (Sari, Murni, & Udiana, 2018). However, the traditional paper-based paradigm requires physical space as well as expensive maintenance to secure these documents. Notaries who often have limited funds cannot afford to hire librarians or archivists for support. As a public official, a notary has the authority to make authentic deeds, so he is responsible for the validity and validity of the deed. This responsibility extends to the notary profession as a whole (Febrianty, 2023).

The government appoints notaries not only to benefit the notaries themselves but also to serve society at large. The services provided by notaries are essentially related to trust between parties so that the state places enormous trust in notaries (Hably & Djajaputra, 2019). Considering that the trust given to a notary is very large, it can be said that the notary is responsible for the trust that has been given.

The large number of activities related to recording carried out by notaries provides quite a big challenge in terms of storage. To comply with regulations regarding company documents, a minimum retention period of 30 years is required, which is quite a long time. This extended duration creates a risk of damage or loss along the way. Due to the lack of storage facilities, the Regional Supervisory Council is unable to accommodate thousands of notarial deeds over 25 years old in its own office (Pratiwi, Rato, & Ali, 2022). Therefore, the notarial deed is stored at the relevant notary's office.

The task of storing and maintaining a large number of deed archives, known as minuta, creates difficulties for Notaries in practice. This problem does not only happen to those currently in office, but also to their successors. Management of these archives makes a significant contribution to the operational costs of running a notary office, which are already quite large (Prena, Novitasari, & Riskiani, 2022). Additionally, fulfilling requests to find documents,

especially old deeds, can be a challenging and time-consuming process. Rapid technological advances in Indonesia also have an impact on notary practices, resulting in a shift from traditional systems to electronic or digital systems (Barkatullah, 2019).

Advances in information and technology have given birth to a new era known as the digital technology revolution. This era is marked by the widespread use of computers and the automation of recording in all industries (Pratama & Iryanti, 2020). Responding to these developments, the government issued the Electronic Transaction Information (ITE) Law in 2008. This law has had an impact on all aspects of life, including the field of notary services which has now adopted the term "Cyber Notary" (Irawan, Bakry, & Hardian, 2022). As a result, the traditional system for making authentic deeds is now being replaced by an electronic system which must be supervised by a Cyber Notary. Storing documents electronically is now also a practice regulated in Law 5, Law Number 2 of 2014, which includes the authority to authorize transactions carried out electronically (Cyber Notary), as well as making waqf pawn deeds and aircraft mortgages (Suwantara & Sukma, 2021).

The use of technological advances has revolutionized the daily tasks of notaries, giving rise to the concept of Cyber Notary. Notaries are required to be proficient in digitizing documents, signing deeds electronically, and carrying out similar functions. The Cyber Notary system presents the opportunity for efficient and secure electronic document storage, which differentiates it from traditional notaries that use paper-based methods. However, the increasing prevalence of cybercrime poses new legal challenges. Storing electronic documents in cloud computing that includes sensitive personal data of the parties involved has the potential to cause privacy violations (Komala, 2022). This can result in misuse of personal information as well as loss of control over that sensitive data, which can have far-reaching consequences. When very important personal data, namely sensitive information, is involved, the responsibility to protect it from malicious actors (such as hackers) as well as internal violations falls on the notary. This can cause concern among the public. If the Notary does not understand or does not act diligently, the Notary can be held responsible for any errors that result in losses for the injured party. This provides a legal basis for the injured party to demand reimbursement of costs and compensation from the Notary. If the Notary makes a mistake or negligence, whether intentional or unintentional, which results in losses for the parties or harms the Notary, then legal action can be taken against the Notary (Affah, 2017). The notary is responsible for paying compensation sanctions to the injured party.

2. Method Research

The author of this research uses sociological juridical methods to analyze the laws and regulations governing the implementation of notarial deeds in Indonesia. By utilizing a juridical approach, the author examines the legal framework surrounding Notarial deeds (I. K. Dewi, 2020). Meanwhile, a sociological approach is used to analyze how these legal rules are applied in practice (Ali, 2023). Therefore, the sociological juridical approach is an effective legal research method and allows testing the practical application of legal rules in society (Arfa & Marpaung, 2018). A sociological juridical approach is needed when facing problems that are closely related to juridical and sociological factors (Ali, 2023). In this case the study is not only focused on the legal regulations governing notarial acts, but also the sociological factors that influence their implementation.

Obtaining data directly from the source through interviewing respondents is called primary data (Saillellah, 2021). Obtaining direct data requires interviews with the subjects under investigation to obtain the necessary information (Rosnida, 2020). Meanwhile, secondary data is data obtained from complementary literature studies to primary data sources. Legal materials that are binding and created by authorized parties are called primary legal materials. For the purposes of this research, the main legal materials used are the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHPer), Law Number 2 of 2014 concerning the Position of Notaries, and Law Number 19 of 2016 Regarding Amendments to the Law. Number 11 of 2008 concerning Information and Electronic Transactions.

The theoretical data collection process involves collecting and analyzing literature and relevant information related to the topic being discussed. For this reason, literature research was carried out through the Diponegoro University Faculty of Law Library, Diponegoro University Central Library, as well as other reference materials. Secondary legal materials that provide clarification of primary legal documents such as draft laws, legal research findings, and the work of legal experts are also used. In addition, legal dictionaries are used as the main source of legal materials. Apart from these sources, books and internet-based documents related to the subject matter are also used as secondary data sources.

The methodology used for data analysis is basically qualitative investigation, namely a research technique that produces descriptive data (Darna & Herlina, 2018). This descriptive data is collected without any numerical

measurements and is based on written or verbal responses from the participants (Satria, Putra, Samsul, & Serah, 2023). The data obtained is then processed using techniques such as research, data matching, and data cleaning. Apart from these techniques, coding is also used to summarize data obtained from interviews with participants and other related parties (Ii. P. D. S. Dewi & Pujiyono, 2020). The parties who were the data sources for interviews in this research were notaries Patris Anggar, SH., M.Kn and Rizka Wahyu S, S.H., M.Kn. who is a notary whose address is in Pati Regency. Descriptive data involves categorizing data into predetermined groups.

3. Results and Discussion

The Notary has limited responsibility for the protection of this digital document, which includes only the loss or damage to the protocol stored in electronic format by the Notary, as well as ensuring the confidentiality of the deed. As stated in Article 16 letter b UUJN-P, a Notary is obliged to make a valid, authentic deed in the form of an official report and serve as an element of the official protocol (Soleman, 2022).

If the Notary's deliberate actions result in the loss or destruction of the minutes of the deed, causing losses to the parties and causing a loss of legal certainty, then this is considered a violation. As intended in Article 16 letter f UUJN-P, the Notary is obliged to maintain the confidentiality of all information relating to the Deed and obtained in accordance with his oath/promise of office, unless otherwise determined by law (N. L. P. S. P. Dewi, Atmadja, & Yus, 2018). Violations of this obligation as referred to in letter b may be subject to sanctions as intended in Article 75 UUJN which can be in the form of a verbal or written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Hans Kelsen argues that responsibility depends on a person's choice in carrying out or being responsible for certain actions. In cases like this, the individual can be subject to sanctions according to the nature of the action he or she commits (Kelsen, 2019). Based on the theoretical concept above, there are various legal impacts that a Notary may face if he commits an unlawful act. These consequences include, among other things, the differentiation of responsibility for these actions in the Civil Code, which includes:

1. Article 1365 of the Civil Code stipulates direct responsibility, which states that every prohibited act that causes harm to another person requires compensation from the person at fault. The notary is responsible if he himself commits fraudulent acts or deception, or if there is falsification of identity or other reasons which result in losses for the parties involved in making the deed. It is important for Notaries to acknowledge their responsibilities in accordance with the law and be ready to face legal consequences and examinations based on Indonesian procedural law.

2. Article 1367 of the Civil Code regulates the concept of indirect responsibility. According to this article, a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of his dependents or goods under his supervision. In the context of the Notary's position, if there is a legal act carried out by an officer or employee, the Notary as the person in charge and supervisor is ultimately responsible for all the consequences that may arise.

The Notary's work space is a special room intended for completing his duties. In accordance with the Notary's responsibilities, he is obliged to remain responsible for all negligence or errors that may arise in the contents of the deed, both before and after its creation (Poa, 2020). This sense of responsibility, according to the theory of responsibility put forward by Hans Kelsen, is a form of willingness to uphold one's duties and obligations, including guaranteeing the material truth of one's actions. The Notary's role in upholding the material truth of a legal document is a civil responsibility. When it comes to the material truth of the documents created, civil liability is constructed based on the definition of unlawful acts (Triyanta, 2020).

The criminal liability of a Notary for the correctness of the deed he makes is an important matter legally. Even though there are no strict regulations in the Law on Notary Positions or in the PPAT Position Regulations regarding criminal provisions, a Notary can be charged with a crime if he commits an unlawful act. As intended in Article 5 paragraph (4) letters a and b of the ITE Law, documents made as authentic deeds are not considered electronic documents or information (Setiadewi & Wijaya, 2020). This means that notarial deeds made via electronic means are not legally recognized as valid evidence according to the ITE Law. The limitations specified in Article 5 paragraph (4) indicate that an authentic deed made by a Notary using an electronic system cannot be accepted as valid evidence, thus making the Notarial deed made by the Notary invalid (Papendang, 2017).

In Decision Number 20/PUU-XIV/2016, the Constitutional Court clarified the interpretation of Article 5 paragraph (1) and paragraph (2) of the ITE Law to avoid irregularities. The Court emphasized that all interceptions must be carried out lawfully, especially in the context of law enforcement. To ensure legal certainty, the court added the word "special" to the phrase "electronic information and/or electronic documents", without changing the meaning

of Article 5 paragraph (1) and paragraph (2) of the ITE Law. Therefore, electronic information and/or electronic documents cannot be accepted as evidence as stated in Article 5 of the ITE Law. The Law on Notary Positions only regulates sanctions for violations committed by Notaries and the deeds they make do not have authentic force or are canceled by the Court (Affah, 2017).

In 2014, the twelfth law was promulgated, which was an amendment to the thirtieth law of 2004 which regulates the duties of Notaries. This law states that the main responsibility of a Notary is to guarantee the correctness of the formalities of an authentic deed. This shows that the Notary in carrying out his role must remain neutral, provide legal advice and consultation to all parties, and uphold professionalism. In addition, the Notary must be fully responsible for any factual inaccuracies or inappropriate advice provided. Even though the Law on Notary Positions does not contain criminal provisions, a Notary can be held criminally responsible if he is proven to have committed a criminal act (Ramadhan & Suhardini, 2019). This law only regulates sanctions for Notary violations related to the deeds he makes. Meanwhile, Notaries themselves are subject to administrative sanctions in the form of a warning or dishonorable dismissal. There are several legal actions that can result in a Notary facing criminal consequences in ratifying a deed.

According to Article 263 paragraphs (1) and (2) of the Criminal Code, making fake or forged documents is a criminal offense that can be punished. This law regulates that anyone who makes a fake document or changes an original document in such a way that it could result in rights, obligations or debt relief, or which is intended to provide evidence of something with the aim of using it or ordering someone else to carry it out. using it as if it were genuine, is punishable by a maximum imprisonment of six years, if the falsification of the document causes loss. The act of counterfeiting is covered by Article 264 of the Criminal Code. More specifically, Article 264 plus Article 264 of the Criminal Code relates to making fake documents, including but not limited to letters and deeds, as well as forgery of original documents (Handoko, 2020). However, these laws and regulations do not specifically regulate the creation of fake letters, changes to original letters, and the use of fake letters. Article 266 of the Criminal Code regulates the offense of directing the inclusion of false information in an authentic deed (Ishak, 2021). This concerns matters that must be included in the deed, but the false information is deliberately included with the aim of exploiting or directing other people to use the deed as if the false information were true. If the use of the deed causes harm, the perpetrator can be threatened with imprisonment for a maximum of 7 (seven) years. Article 55, plus Article 263 Paragraphs (1) and (2), Article 264, or Article 266 of the Criminal Code prohibits carrying out, ordering or involved in an act that is considered criminal (Wiradiredja, 2016). Taking part in making false or counterfeit documents as referred to in Article 56 Paragraphs 1 and 2, Article 263 Paragraphs 1 and 2, or Article 264 Paragraphs 1 and 2 of the Criminal Code is an offence.

If an error occurs in making the deed, the Notary may be subject to administrative sanctions. If the error is solely due to the Notary's fault, they become joint defendants. The party who feels aggrieved has the option to sue the Notary and request that the deed be cancelled. If the plaintiff is harmed due to the Notary's mistake, the Notary can also be subject to civil sanctions, such as being required to provide compensation to the plaintiff. If the Notary is proven to be involved in fraud or conspiracy in making the deed, the Notary can be criminally prosecuted in the District Court. If a notary violates the code of ethics, he or she may be subject to administrative sanctions from the Notary Supervisory Board, as well as legal action from the police. If it can be determined that the Notary deliberately changed data or deliberately removed or damaged the Deed in a way that meets the criteria for an unlawful act as intended in Article 1365 of the Civil Code, then the Notary will be held responsible in three different ways, namely administrative, civil and criminal. Sanctions for violations of Article 85 UUJN are imposed by the Central Supervisory Board, Regional Supervisory Council, and Regional Supervisory Council which are together called the MPD (Putri & Marlyna, 2021).

In the event of loss, damage or destruction of the deed document, the deed document is stored in electronic form so that it can be replaced with a copy. The position of the copy is stated in Article 1889 of the Civil Code which regulates that if the original deed is not available, the copy can be used as evidence in civil cases provided certain provisions are met (Mandagie, 2022). In this case, the Notary knows that the deed no longer exists, so he is legally obliged to report the loss of the minutes to the police and record them in the Repertory and Deeds Registry by stating the reason for the loss. The Civil Code differentiates between direct and indirect responsibility for unlawful acts and provides statutory provisions regarding protection and compensation for injured parties (Prayogo, 2016).

Notaries who are appointed as public officials are authorized by the state to carry out certain state duties (Anand, 2018). They do not solely invest for their own benefit, but are also responsible for providing services that benefit the parties involved in civil legal actions. The integration of technology in office operations has made it possible to manage archives via electronic media. This electronic media aims to improve archive management,

especially in storing notary protocols. However, electronic information media such as cyberspace, libraries, archive storage areas, databases, and court files have risks that include virus infection, power outages, unauthorized access, as well as damage or destruction caused by user carelessness or poor maintenance. Deliberately removing or destroying electronically stored Notary protocols is considered a violation of conduct. Potential legal violations against Notaries who carry out inappropriate handling of electronically stored Notary protocols could result in losses for the parties involved.

The Theory of Legal Responsibility as proposed by Hans Kelsen in Theory of Responsibility determines the legal responsibility of a notary for any violation of notary protocols that are stored electronically (Kelsen, 2019). This theory argues that all losses suffered by a person due to actions that are contrary to the law are borne by the person whose actions caused the loss (Kelsen, 2019). In terms of storing notary minutes in electronic form, the responsibility lies entirely with the notary as an individual in carrying out his duties (Kelsen, 2019). It should be noted that the evidentiary value of electronically stored deeds and printed deeds is not the same as the evidentiary value of authentic deeds. They are considered ordinary evidence and require additional supporting evidence such as witness statements, confessions and other documents to strengthen the case. If the notary submits a printout of the electronically stored deed to the court without additional evidence, then it has no evidentiary weight. Therefore, the judge is left to consider the value and strength of the evidence.

The act of destroying files by reducing, deleting, or changing them without the knowledge or consent of the parties involved is an unlawful act that often results in financial losses, without any legal remedy for the victim. In accordance with Article 1356 of the Civil Code, every act that violates the law and causes harm to other people requires the party responsible to compensate for the losses incurred (Setiawan, 2021). Storing Notarial Protocols in electronic form has two purposes - economic as well as legal. Economically, electronic storage has proven to be practical, efficient, cost-effective and safe. Legally, this makes the legal process easier, especially regarding electronic evidence and the rules of evidence. A Notary must be responsible for all fraudulent or deceptive acts that originate from them, and they must be responsible for any bad incidents that occur. According to Article 62 UUJN, the storage of electronically recorded notarial deeds applies to notarial protocols (Yetniwati, Yahya, & Amir, 2021).

To ensure security and accountability, it is very important to build a system that is trustworthy, reliable and accountable. This will allow electronically stored records to be legally binding as well as authoritative in the future. For this to be possible, the system must be accountable, so that the credibility and accuracy of records is given more attention. Article 6 of the ITE Law regulates that the recording of deeds in electronic documents is considered valid if certain conditions are met (Embang & Sudiarti, 2023). The term "accessible" refers to the ability of electronically generated deed minutes to be easily found and retrieved via an electronic platform. The electronic system has the ability to display minutes of deeds so that they can be seen by parties interested in seeing them. Preservation of deed records is guaranteed by maintaining their integrity. Through a careful analysis, examination and analysis process, the accuracy and authenticity of the contents of the event report can be guaranteed.

The concept of accountability includes guarantees that all goods or actions obtained can be traced from the initial stages of creation or acquisition to their storage, as well as even during the reporting or transfer process. This means that if there is a requirement to report or send the item to a certain entity such as the Regional Supervisory Council, its authenticity and accuracy can be validated without a doubt. To conclude the discussion, the role of the Notary in making deeds and storing deed minutes electronically as well as holding responsibility for violations or crimes caused by negligence or malicious intent is classified into three categories of responsibility. Administrative responsibility imposed is in the form of a verbal or written warning, temporary dismissal, or honorable or dishonorable dismissal. Criminal liability is imposed if the Notary is involved in fraudulent or deceptive practices. Civil liability arises in the form of lawsuits filed by injured parties. Electronic storage of deed minutes is permitted based on various laws, provided that the deed must be original and stored conventionally. Photocopies or printed versions of deed minutes stored electronically may be accepted as valid evidence, in accordance with legal precedent. The authenticity of digital transaction records is left to the discretion and decision of the judge. Judges reserve the right to approve or reject transcribed transaction records, stored in electronic format, as admissible evidence.

4. Conclusion

After analyzing the information provided, it can be concluded that electronic storage of minutes is permitted under applicable law. However, to fulfill the requirements for electronic storage, the deed must first be ratified and recorded conventionally. The opportunity for notaries to make deeds electronically cannot be implemented because there is no synchronization (contradicts) with UUJN and UU ITE. Meanwhile, Article 5 paragraph (4) of the ITE Law

provides limitations by excluding notarial deeds from not being included in the category of electronic information/documents. Legal certainty regarding digital evidence, whether in the form of printed or photocopied minutes, has been established in legal science. Notary responsibilities include administrative, civil and criminal duties. However, if there is a violation of conventional storage provisions, the Regional Supervisory Council has the authority to issue a verbal warning as an administrative sanction. Until now, there has been no strict regulation regarding the responsibilities of notaries in maintaining the security of digital deeds. Future legislation should include preventive, repressive measures, as well as sanctions to address this problem.

5. Speech Thank You

The researcher would like to thank the supervisor in this research, Prof. Dr. Budi Santoso, SH., MS. and all parties who helped make it happen.

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