

Notary Responsibilities of Protocol Holders Toward A Copy of Minuta Due Which Has Not Signed Complete

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ABSTRACT

Responsibilities of the Notary Protocol Holder for Copies of the Minutes of Deed that have not been Signed in Complete. This study aims to determine the actions of the protocol holder Notary Public if there is a request for a copy of the minutes of the deed whose incomplete signature and legal consequences if the Notary holder of the protocol provides a copy of the minutory deed whose incomplete signature . This study uses normative juridical law research and is equipped with several approaches, namely the statutory approach, conceptual approach and historical approach. Public Notary is a public official who is authorized to make an authentic deed and has other authority as referred to in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position. When the authority is given then the responsibility will be attached to the notary for the transfer of the protocol, including to the notary recipient of the notary protocol and it is incumbent upon the Notary to provide a copy of the minutes of deed when someone comes to request the copy and in fact there are also found the minutes of the deed not signed completely. Based on this, the problem arises regarding the first, What is the action of the protocol holder Notary Public if there is a request for a copy of the minutes of deed that has not yet completed the signature? second, the legal consequences if the Notary of the protocol holder gives a copy of the minutes of deed whose incomplete signature. The results found in this study are that the Notary Public does not need to issue a request for a copy of the Minutes whose signature is not complete at the request of anyone, and the Public Notary can make a statement that the Minutes of the Deed requested by the parties are incomplete or incomplete signed by the parties.

Keywords: Notary Public, Notary Protocol, Minutes Deed

1. INTRODUCTION

Notary Public is an official authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. The notary definition has been mentioned in Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.

The position of the Notary Public official, in the sense that the authority of the Notary has never been given to other officials, with the understanding that as long as the authority is not the authority of other officials (Rudianto & Roesli, 2019). In accordance with these provisions, the Notary Public is the only official authorized to make an authentic deed regarding all deeds, agreements and stipulations required by a general regulation or by the interested parties to be stated in an authentic deed, all as long as the making of the deed by a general rule is also not assigned or excluded to other officials or people.

In the Civil Code itself, based on Article 1868 it has been explained that an authentic deed is a deed made in the form determined by the Act by or in the presence of a public official authorized for that place where the deed was made.

Authentic deed referred to as the authority of a Notary is made in the form determined by the Law and made before him Notary is useful for people who need a deed such as a deed of establishment of a Limited Liability Company, a will, a power of attorney, and so forth. The presence of a Notary Public is a need and response to the public's desire for legal certainty for each agreement he does, especially agreements relating to buying and selling, leasing and so on.

Written agreements made before a notary are called a deed. According to Article 1 number 7 UUJNP stipulates that: "Notary Deed is an authentic deed drawn up by or before a Notary according to the form and procedure stipulated in this law." The purpose of making written agreements made before the Notary is that the deed be an authentic deed that can be used as strong evidence if there is a dispute between the parties or there is a lawsuit from another party.

Authentic deed provides binding and perfect evidence to the parties (and their heirs) or those who obtain the rights from these parties, this is in accordance with the provisions of Article 1870 of the Civil Code which reads as follows: "For the interested parties and experts the inheritance or those who get the rights from them, an authentic deed provides a perfect proof of what is contained therein".

The power inherent in authentic deed is perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*), which means that if the authentic deed evidence is submitted fulfilling the formal and material requirements and the opposing evidence presented by the defendant does not diminish its existence, it is itself attached to the strength of a perfect and binding evidence (*volledig en bindende bewijskracht*), thus the correctness of the contents and statements written therein shall be perfect and will be binding on all parties regarding what is written on the deed. Perfect and binding on the judge so the judge must make it as a perfect and sufficient factual basis to be able to make a decision on the settlement of the dispute.

As a public official (*openbaar ambtenaar*) The notary is authorized to make an authentic deed. In connection with this authority, the Notary may be liable for his actions / work in making an authentic deed. The responsibilities of the Notary Public official include the responsibilities of the Notary Public itself relating to the deed. In connection with this authority, a Notary may be liable for his actions / work in making authentic deeds. The responsibility of a Notary Public as a General Officer includes the responsibilities of the Notary profession itself related to the deed, including: First, the Notary's civil liability for the deed he made. The responsibility in this case is the responsibility for the material truth of the deed, in the construction of acts against the law , what is meant by acts against the law here in the sense of active or passive nature. Active here in

the sense of doing something that causes harm to other parties. Whereas what is meant by passivity, in the sense of not doing an act which is a must, resulting in other parties suffering losses. So the elements of acts against the law here are acts against the law, an error and a loss caused.

Historically the main task and authority of the Notary is to make an authentic deed both the official deed and the party deed in the form of a minuta deed, except for certain deeds and if there is a direct request from an interested party, the Notary can also make a deed in the form of in originali.

Minutes of Deed are original deeds that are stored and are part of the Notary protocol and from the minutta deeds saved this Notary is authorized to issue Copies, Quotations, and Grosse Deeds, while for deed in originali is the Original Deed given to the parties directly interested in the deed and This deed in originali is not kept by a Notary in the Notary Protocol. so for the deed in origin, the Notary may not issue a copy, quote and gross of the deed.

What is meant by Minuta (*ninit*) is the original certificate signed by the parties, witnesses and Notary and kept in the Notary archive. So it's not a copy (derivative) or quote and also not a grosse deed.¹ Quotations can also be referred to as derivatives of part of words, so it is an incomplete derivative. This quote is taken from a part of the Minutes of Deed, the quotation is done in accordance with the request of the party concerned, in the sense of which part should be quoted. In the deed and the end of the deed must still exist. Quotations from the Minutes of Deed are placed on the contents of the deed, and at the end of the deed it is written as a quote.²

Of all the deeds made in the form of minutes of the deed, the Notary is authorized and at the same time obliged to issue a copy, quote, grose deed and show or inform the contents of the deed to those directly interested in the deed. Notary Public is a public official who is authorized to make an authentic deed and has other authority as referred to in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position. When the authority is given then the responsibility will be attached to the notary on the transfer of the protocol, including to the notary recipient of the notary protocol and it is incumbent upon the Notary to provide a copy of the deed minutes if someone comes to request the copy and in fact there are also found several minutas deed that has not been signed in full by the parties who were present and should have signed it. Based on the background of the problem outlined above, two problem formulations are determined, as follows:

¹ R.Soegondo Notodisoerjo, *Hukum Notariat Di Indonesia (suatu penjelasan)* , Cetakan Pertama, Raja Grafindo Persada, Jakarta , 1993, hlm. 176.

² Habib Adjie. *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris)* , Cetakan Pertama , Refika Aditama, Bandung, 2008, hlm. 11.

1. What is the action of the Notary of the protocol holder if there is a request for a copy of the minutes of deed that is incomplete signature
2. Legal consequences if the Notary of the protocol holder provides a copy of the Minute of the Deed incomplete signature.

2. RESEARCH METHOD

The method used is the normative legal research method. Legal research in English is called *legal research* or in Dutch language *rechtsonderzoek*.³ Legal research is conducted to find solutions to legal issues that arise, namely to provide prescriptions⁴ about what should be the issue raised⁵ Legal research is also as a process to find the rule of law, legal principles, and legal doctrines in order to deal with the legal issues encountered.⁶

This research was conducted using the type of Normative Legal research, namely legal research conducted by examining literature material (secondary data) that includes research on legal principles, legal systematics and other legal materials that are related as well as analyzing laws and regulations so that the writer can solve the problem formulation in this research.

3. SOURCES OF LAW MATERIALS

Source of Legal materials used in this study are primary legal materials and secondary legal materials, such as:

a. Primary Legal Materials

Primary legal materials in the form of related legislation,

namely:

1. The Constitution of the Unitary State of the Republic of Indonesia in 1945.
2. The Civil Code (Civil Code)
3. Law No. 30 of 2004 concerning the position of NotaryNo.
4. Law2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning the position of Notary Public.

b. Secondary Legal Material Secondary

legal material in the form of all legal publications which are official documents. Secondary legal material is also often referred to as library data which includes literature, text books,

³ Dyah Ochtorina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, Sinar Grafika, Jakarta, 2014, h. 1.

⁴ Preskripsi berarti apa yang diharuskan, Lihat Tim Redaksi Tesaurus Bahasa Indonesia Pusat Bahasa, *Tesaurus Bahasa Indonesia Pusat Bahasa*, Pusat Bahasa Departemen pendidikan Nasional, 2008, h. 1213.

⁵ Ibid.

⁶ Ibid., h.3

legal dictionaries, legal journals and articles related to the issues discussed, whether originating from magazines, newspapers or online media and relating to The object of research for the next systematically arranged based on the subjects in this study.

4. DISCUSSION

What is the action of the Notary of the protocol holder if there is a request for a copy of the minuta whose signature is incomplete

In carrying out their position, the notary or substitute notary makes a deed in the form of a deed of minutes and saves it as a notary protocol. The notary protocol itself based on Article 1 letter 13 of the UUJN is a collection of documents that constitute the State archives which must be kept and maintained by a notary public. Here, the notary protocol holder has the authority and responsibility for the deed. In article 16 paragraph 1 letter b the notary has an obligation to make the deed in the form of a deed of minutes and keep it as part of the deed protocol. However, in the case of a notary making a deed in the original form it does not apply, this is in accordance with the provisions of Article 16 paragraph 2 of the UUJN.

The notary protocol according to the explanation of Article 62 of Law Number 30 Year 2004 concerning the Position of Notary, consists of:

- a. Minutes Deed;
- b. register book of deeds or repertory;
- c. book list of deeds under the hand for which the signature is done
 1. before a Notary or deed under the hand that is registered;
- d. the register of tappers or klapper names;
- e. protest list book;
- f. will list; and
- g. other register books that must be kept by a Notary based on the provisions of the legislation.

The notary is obliged and primarily responsible for the making of an authentic deed, then saves the minutes of the deed including all notary protocols and grants, copies and citation of the deed. In this case the notary as the depositary of the protocol and in accordance with article 54 of the UUJN Notary can only provide, show, or notify the contents of the Deed, Grosse Deed, Copy of Deed or Quotation of Deed, to persons with direct interest in the Deed, heirs, or people who have rights , unless otherwise specified by law.

Meanwhile, if there is a dismissal of a notary or notary who has retired (retired), then there are things that need to be considered in the dismissal of the notary that is related to the notary protocol, because the protocol is a State document that must be kept and maintained by a notary and for continuity providing notary services. Article 65 of the UUJN has stated that Notaries,

Notary Substitutes, and Temporary Notary Officers are responsible for any Deed that is made even though the Notary Protocol has been submitted or transferred to the depositor of the notary protocol.

As the holder of the notary protocol, both the notary, the substitute notary, and the Acting Notary Public are responsible for storing the notary protocol in the place of storage. Regarding the place of storage, the law not only regulates the way it is stored, but also regulates the place of storage. The place of storage must be easily accessible and safe, the place of storage must also be locked.⁷

When the responsibility and authority are given, the responsibility will be attached to the notary for the transfer of the protocol, including the notary recipient of the notary protocol and it is incumbent upon the Notary to provide a copy of the minutes of the deed if someone comes to request the copy and in fact there is also found minuta deed that has not been signed in full, while the party requesting the copy still wants the copy to be issued. If the Notary Public encounters a problem like this, it should not be necessary to issue a copy at the request of anyone, but the Notary is sufficient to make a statement that the Minutes of the deed requested the copy are incomplete or incomplete signed by the parties. If the copy holder insists on requesting a copy now from the protocol holder Notary even though the Minutes do not have a complete signature, it is better to advise the person concerned to submit an application to the District Court so that the copy is confirmed by the parties themselves before the District Court hearing.

Legal consequences if the Notary holder of the protocol provides a copy of the incomplete minuta whose signature is incomplete

The provisions of Article 1868 of the Civil Code emphasize that: "An authentic deed is a deed that is in the form determined by the Law, made by or in front of public officials in charge for it in the place where the deed was made". Specifically stipulated in the provision of Article 1 number (7) UUJN that: "Notary Deed is an authentic Deed made by or before a notary according to the form and procedure stipulated by this law".

The protocol notary holder in providing a copy of the Minutes that is known to have not yet completed the signatures of both the parties, the witnesses and the Notary Public, if questioned about the legal consequences can be categorized as a forged deed, because the Deed itself is a document as evidence which is given a signature containing the event that became the event the basis of a right or engagement that was intentionally made in the beginning for proof. So to be classified in terms of the deed, the letter must be signed and the obligation to sign the letter to be

⁷ A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, (Surabaya: Perwira Media Nusantara, 2015), hal. 62

referred to as a Deed comes from Article 1869 of the Civil Code that: "A Deed that cannot be treated as an authentic Deed, either because it is not authorized or incompetent the general official concerned or because of a defect in its form, has the power of writing under the hand if not signed by the parties ".

The necessity for a signature is nothing but to distinguish one deed from another or from another deed and the function of the signature is to characterize or to individualize a deed. Reading the deed up to the signing is a unity of the inauguration of the deed as a legal document, where before the deed is signed, the deed is read in front of the parties concerned and witnesses, in order to convey the truth of the contents of the deed in accordance with the wishes of the parties .

If the Notary holder fails to provide a copy of a minuta whose signature is incomplete and in fact there is a party who questions it, then it is categorized as an act of falsifying an authentic deed so that the deed is null and void by law with the consequence that the Notary holder of the protocol can be criminally prosecuted. with Article 264 of the Criminal Code for forgery of an authentic deed and can also be sued in civil law accompanied by claims for compensation.

5. CONCLUSION

Actions of the protocol Notary Public if there is a request for a copy of the Minutes whose signature is incomplete ,then the Notary Holder of the Protocol should not need to issue a copy at the request of anyone, but the Notary can make a statement that the Minutes of the deed requested the copy is incomplete or incomplete signed by the parties. If the copy holder insists on requesting a copy now from the protocol holder Notary even though the Minutes do not have a complete signature, it is better to advise the person concerned to submit an application to the District Court so that the copy is confirmed by the parties themselves before the District Court hearing.

Legal consequences if the Notary Holder of protocol provides a copy of the Minutes whose incomplete signature , if disputed, can be categorized as authentic deed, so that the deed is null and void by law and the Notary may be criminally prosecuted under article 264 of the Criminal Code due to the falsification of authentic deeds and can also be sued in civil law accompanied by claims for compensation.

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