

Risk Mitigation of Notarial Practical Through The Notary Responsibility Release Clause

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Abstract

The widespread of notary criminalization recently proves legal protection for notary in Indonesia is still unstable. One risk mitigation that could be used to emphasize it is by implementing the Notary Responsibility Release Clause in each created deed. Therefore, the research is needed regarding the implications of applying the Notary Responsibility Release Clause to ensure a consistent understanding of law enforcement in Indonesia. The purpose of the research is to elevate the issue of how the implications of the Notary Responsibility Release Clause should be interpreted and fully applied, especially in notarial practical and generally in law enforcement practices in Indonesia. The research method in this article is doctrinal. The research typology is descriptive-analytical research using secondary data through document study. This research aims to find the necessity of implementing the Notary Responsibility Release Clause as legal protection for notary whose duties are based on good faith, the rule of law, and professional ethics. Also, it creates clear limitations regarding the notary's responsibility in facing demands or legal claims caused by notary act based on good faith yet causing unintended consequences for the client. Thus, a good faith notary could be protected in fulfilling their official duties.

1. Introduction

Notary is the only general official who has the right and authorized attributively to perform certain state duties in the field of civil law, especially in authentic deeds creation regarding all acts, agreements, and determinations required by law regulations or each party needs. The authentic deeds created by notary is recognized by the state as the fullest, strongest, and most perfect evidence tools in providing legal certainty for the entire Indonesian society.

The importance of the notary's role in creating authentic deeds as perfect evidence that could determine clearly the rights and obligations of each party. Through this authentic deed, could expect to guarantee legal certainty and minimize disputes among the parties in the future.

In fulfilling their duties as general officials, the notary is subject to Law Number 30 of 2004 concerning Notary Positions and amended by Law Number 2 of 2014 concerning Amendments of Law Number 30 of 2004 concerning Notary Positions (hereinafter referred as UUJN), which regulates the rights, obligations, and prohibitions as references for notary act in Indonesia. Completely by the Notary Ethic Code, in which all provisions align with the spirit of UUJN. Both regulations demand notary to carry out their duties with good faith, independence, and objective, and also responsible for the accuracy and deed validity.

Notary acts refer to various existing regulations, yet this does not mean that notary are free from dispute in fulfilling their duties. Therefore, notary potentially face various work-related risks. In some cases, notary have been involved in legal disputes, which are illegal, violations, to criminal offenses. The sanctions vary, from administrative penalties, to fines, and imprisonment.

Thus, one of the useable actions that can be taken is using the Notary Responsibility Release Clause. This clause is not fully accepted by all parties. this means, that the different arguments of notary's responsibility for their created deed still exist. Notary only responsible in superficial and formal upon a deed, and unable to be responsible upon the substantive material aspect of the deed. However, law enforcement practice in Indonesia often seems to assess and include notary as willing parties with an interest in the deed, who contribute to the purpose of the deed.

Notary in fulfillment of their positions in creating authentic deeds always refer to requests of clients by constantly the needs of each party (Akta Partij) or with describe personal description as seen, heard, and his personal experience inside (Akta Relaas). This none of notary interest in creating deeds, instead only record the intentions of the party need. Therefore, anything written in the authentic deed should rightfully be considered as the will that reflects the intentions and faith of each party, not the intentions and faith of the notary.

To fulfill the law as government assistance to manage some of the public's interests related to their needs for authentic deeds and other civil affairs, legal protection should be applied to notary duties. A legal protection guarantee is an effort that must be mutually agreed upon as notary -as law enforcers alongside other legal enforcers- need to be considered to act in good faith to fulfill the duty unless proven otherwise.

Based on this background, research is needed to provide the necessary of the Notary Responsibility Release Clause, how this clause is effectively implemented, and its impact on notarial practice and legal development in Indonesia. This research is expected to provide a strong foundation for notary, stakeholders, and legal researchers in well understand the urgency of applying the Notary Responsibility Release Clause and how this could assist in managing risks in notarial practice and law enforcement in Indonesia. The research on the implications of applying the Notary Responsibility Release Clause as a risk mitigation in notarial practice in Indonesia is conducted.

2. Research Method

This research employs the doctrinal research method. The typology of research is analytical descriptive research. The type of data in this research is secondary data. The data collection tool is a document study or literature study, such as Legal Regulations, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, and the Notary Ethic Code. The data analysis method in this research is qualitative. The form of the research results is analytical descriptive.

3. Results And Discussion

3.1. Responsibility in Notary Profession Practical

Notary in fulfillment of the duty in society, notary must not act contrary to public order or morality. A notary may refuse to assist if the content of the statement or legal act proves as bad intentions. In the execution of their duties, the notary must uphold noble values and the dignity of their position, personal integrity, and a legal ethic that strictly follows legal regulations and professional ethics code. A notary's responsibility as a public official related to material truth can be distinguished into four types, as follows:¹

1. According to the Civil Code

Notary responsibility in civil through the material truth in created deed means the responsibility in civil through the material truth deed in illegal construction. According to Wirjono Prodjodikoro, the personal responsibility practice usually arises when it's a person does an illegal act. Mostly these acts are called illegal acts according to the Civil Code.² These illegal acts are

¹ Nico, *Tanggung Jawab Notaris Selaku Pejabat Umum*, (Yogyakarta: Centre For Documentation and Studies of Business Law, 2003), hlm. 250.

² Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan buku ketiga*, (Bandung: Citra Aditya Bakti, 2015), hlm. 286.

referred to as an active and passive meaning. The Active means doing an action that causes harm to the other party. Meanwhile, passive, means ignoring the obligatory that causes harm to the other party. An act is categorized as an illegal act if:³

- 1) Violates the individual rights;
- 2) Contradicts with legal rules;
- 3) Contradicts with morality;
- 4) Contradicts with propriety in considering the personal interests and individual property in daily interactions.

2. According to the Criminal Code

The notary's responsibility in criminal through the material truth in the created deed means the criminal acts committed by a notary in their capacity as a public official not in an individual context as a citizen in general, doing an illegal act by law if proven committed a violation, it will be followed by specific criminal sanctions.⁴ The elements of a criminal include:

- 1) Human actions;
- 2) Complying the formulations of legal regulations, which is applied as legal principle, *nullum delictum nulla poena sine praevia lege poenali* (there is no act prohibited and punishable if it is not or has not been declared in the law);
- 3) Contrary to the law.

A common thing that may occur in notary practical that lead to criminal, are:

- 1) Forgery of documents, regulated in Article 263 paragraph (1) of the Criminal Code;
- 2) Forgery of authentic deeds, regulated in Article 264 paragraph (1) of the Criminal Code;
- 3) Including false information in authentic deeds, regulated in Article 266 paragraph (1) of the Criminal Code;
- 4) Assisting in making false documents or forged documents and using false documents or forged documents, regulated in Article 56 paragraph (1) jo. Article 263 paragraphs (1) and (2) or Article 264 or Article 266 of the Criminal Code.

3. According to the Notary Position Law

³ Rahmad Hendra, "Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru", *Jurnal Ilmu Hukum* Volume 3 No. 1.

⁴ Subekti, *Hukum Pembuktian*, (Jakarta: Intermasa, 2005), hlm. 17.

The responsibility of a notary according to the Notary Position Law upon the material truth in the created deed means the notary who violates the provisions of Article 16 and Article 44 of the Notary Position Law, will be subject according to Article 84 and Article 85 of the Notary Position Law, such as oral reprimands, written reprimands, temporary suspension, honorable discharge, and/or dishonorable discharge, may also sentence the sanctions such as created deed by notary will be only has unauthentic deed or legally void. Also, if causes harm to another involved party, it will demand compensation, indemnity, and interest from the notary.⁵

4. According to the Notary Ethic Code

Indonesian notary is under the auspices, called Ikatan Notaris Indonesia (INI), which adheres to the Notary Ethic Code as a result of the Extraordinary Congress of the Ikatan Notaris Indonesia held from May 20-30, 2015, in Banten in fulfillment of the profession ethic. The Notary Ethic Code is all moral principles that must be followed by all association members and notary positions, including Temporary Notary and Substitute Notary. The Notary Ethic Code covers five aspects:⁶

1. A personal Ethic Notary, is an ethic that rules how a notary acts personally and internally. This ethical rule value that must be given by a notary as an individual or human being.
2. Official Performance Duty Ethic, is an ethic that rules a notary's behavior as a public official in fulfilling the duties by the Notary Ethic Code.
3. Client Service Ethic, is an ethic that rules a notary to assist the client.
4. Fellow Notary Relationships Ethic, is an ethic in how to treat, correspond, and communicate with fellow notary.
5. Supervision Ethic, is an ethic that supervises to prevent authority and power misleading (abuse of power).

3.2. Risks in the Implementation of the Position of Notary and the Urgency of Implementing a Notary Liability Release Clause

1. Risks in the Performance of the Office of a Notary

⁵ Habib Adji. *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*. (Bandung: Refika Aditama, 2014), hlm. 88.

⁶ Christine, *Implikasi Klausula Pembebasan Tanggung Jawab (Asas Eksonerasi) pada Akta Notaris*, (Tesis Magister Kenotariatan, Fakultas Hukum Universitas Indonesia), hlm. 38.

In carrying out their duties as public officials, notary often encounter the following risks:⁷

a. False figures;

The term "false figures" can refer to any party involved, such as the applicant, husband/wife, grantor, guardian, and others. For example, an applicant brings a woman introduced to the notary as his wife. However, it turns out that the woman is not the legitimate wife who should provide consent to the legal act to be executed by the husband in the authentic deed.

b. Denial of signature;

The applicant denies that the signature appearing in the authentic deed is not theirs, or the applicant denies that they approached the notary to create the deed.

c. Denial of the deed's creation date;

The applicant denies that the deed's creation date is the truth. The date stated in the authentic deed is incorrect.

d. Forgery of identity cards and supporting documents;

The applicant uses a fake identity card or possesses dual identity identification cards. Additionally, there is forgery of official documents such as certificates, powers of attorney, inheritance certificates, and other necessary documents for legal acts in authentic deeds.

e. Denial of deed reading;

Notary have significant responsibilities in carrying out their duties, especially when facing a sequence of ill intentions from the party that could involve the notary as a defendant or co-defendant in a case. The above risks are highly likely to be accused against the notary and sought for accountability, whether administratively, civilly, or criminally.

The inclusion of a Responsibility Release Clause in the deed is solely to protect the notary in carrying out their duties. This clause is designed by the notary themselves to shield against potential risks that may arise and cause the authentic deed they create to be void ab initio or experience a degradation of evidentiary strength, similar to an underhand deed.⁸

At present, there are no regulations regarding the application of the Notary Responsibility Release Clause, both in the UUJN (Notary Law) and the

⁷ *Ibid*, hlm. 60.

⁸ *Ibid*, hlm. 61.

Notary Ethic Code. The implementation of the Notary Responsibility Release Clause in practice depends on the individual needs of the notary who considers it important or not. However, in the future, it is necessary to examine the application of this clause, given the increasingly complex issues faced by notary, requiring legal protection.

In the authentic deeds created by notary, the notary does not become a party to the deed. The notary's name is mentioned in the deed, but not in their capacity as a party, but rather as a public official creating the authentic deed. The role of the notary is to formulate and document what the applicant desires and explains regarding a legal action in a written document called an authentic deed. The inclusion of the Notary Responsibility Release Clause in the authentic deed needs to be agreed upon by the party and the notary itself, unlike other clauses found in authentic deeds, which are generally agreed upon by both parties in the deed.

The purpose of applying the Notary Responsibility Release Clause is not at all to evade the notary's responsibility. If it can be proven that a notary made a mistake or omission in performing their duties, the notary must still be held accountable administratively, civilly, and criminally according to the provisions of applicable laws and regulations. It is not justified to include the Notary Responsibility Release Clause to automatically eliminate the notary's responsibility if the notary has been proven to make mistakes or omissions in carrying out their duties.

2. The Urgency of Applying the Notary Responsibility Release Clause

Notary, in carrying out their duties, is not immune from unintentional errors. In the course of their duties, a notary may make unintentional mistakes, such as:⁹

- 1) Typographical errors in a notarial deed copy can be rectified by creating a new copy identical to the original, and only the copy identical to the original has the same legal force as the original deed.
- 2) Errors in the form of a notarial deed, which should have been recorded as meeting minutes but were instead drafted as a statement of the meeting's decision.
- 3) Errors in the content of a notarial deed, concerning the statements of the party appearing before the notary, which may initially be

⁹ Mudofir Hadi, "Pembatalan Isi Akta Notaris Dengan Putusan Hakim", *Varia Peradilan Tahun VI Nomor 72*, September, 1991, hlm. 142-143.

considered correct during the deed's creation but later proven to be inaccurate.

Considering the position of a notary, they are not a party to the deed or the agreement made by the party before the notary. Therefore, if a dispute arises among the party (civil or criminal), the notary should not be involved in any way because the authentic deed created by the notary, which has perfect probative force, should be viewed as it is written and stated within (as is). However, in reality, notary are often included as defendants or co-defendants to fulfill civil claims due to the incomplete details of the defendant, resulting in an error in persona that leads to the rejection of the lawsuit.

Authentic deeds created by notary essentially contain formal truths based on what the party declares to the notary. The notary is obligated to listen to the statements or explanations provided by the party before the notary and then document them in the authentic deed. The notary ensures that the applicant accurately states what is written in the deed, but the notary does not guarantee that the applicant truthfully states what they declare to the notary.

The Inclusion of the Notary Responsibility Release Clause is allowed in the deed as a form of protection for the notary against potential legal claims. Authentic deeds are created by notary based on formal evidence and statements from the party recorded in the authentic deed. If legal issues arise later regarding what was conveyed and explained, the responsibility lies entirely with the party, including if the statements made by the party to the notary are not true, as that is the responsibility of the party.

Notary carry out their duties diligently, meaning not everything shown and presented is immediately trusted and recorded in the deed. A notary must be more cautious in verifying the formal correctness of the documents presented. Additionally, the notary may state in an agreement that the party guarantees the accuracy of the identity documents provided to the notary. This serves as protection for the notary in case of bad faith from the party using fake documents and identities to create an authentic deed.

The inclusion of the Notary Responsibility Release Clause is useful in case of legal proceedings, especially when the notary is suspected by investigators of violating Article 55 paragraph (1) of the Criminal Code. Through this clause, it can be affirmed that the notary is not collaborating with the applicant in the alleged criminal act. Notary also needs to be meticulous to ensure that all documents, whether original or photocopies, shown to the notary and kept as deed minutes, are authentic evidence.

The application of the Notary Responsibility Release Clause is crucial as an effort to minimize potential risks for the notary in carrying out their

duties. The intended Notary Responsibility Release Clause is a provision or clause in the deed created by the notary that allows the notary to release part or all of the responsibility related to the performance of their duties.¹⁰ The importance of implementing the Notary Responsibility Release Clause in notarial practice will have an impact on the following aspects:

a. Protection for the Notary

the Notary Responsibility Release Clause is a legal step that provides assurance and security in the execution of notarial duties. This clause is designed to offer legal protection to the notary as long as they perform their duties in good faith, uphold their dignity, and make efforts to minimize risks by being thorough, meticulous, and careful in creating deeds.¹¹

Through the Notary Responsibility Release Clause, notary can be shielded from legal claims that may arise due to unintentional errors, omissions, or well-intentioned decisions that lead to undesired consequences. This clause establishes limits on the notary's responsibility and can provide a strong legal basis to affirm that the notary has acted by legal provisions and the professional ethics of the notarial profession.¹²

This protection is crucial because notary play a crucial role in creating legal documents related to the rights and obligations of the involved party. Despite the notary's best efforts to ensure the validity and accuracy of the authentic deeds they create, the risk of errors or non-compliance with legal rules still exists. the Notary Responsibility Release Clause sets clear boundaries regarding the extent to which the notary is responsible for actions or decisions made during the process of creating authentic deeds.

In addition to protecting against legal claims, the Notary Responsibility Release Clause can also offer legal certainty that benefits both the notary and the party involved in legal transactions within the deed. This helps create a more predictable legal environment and provides certainty for the notary to continue their duties with integrity and professional responsibility. Thus, legal protection through the Notary Responsibility Release Clause not only ensures legal security for the notary but also supports the creation of a legal

¹⁰ Koos S. "The Digitization of Notarial Tasks - A Comparative Overview and Outlook of 'Cyber Notary' In Indonesia and Germany". *The Indonesian Journal of Socio-Legal Studies*. 2023.

¹¹ Pratama B, Warsito H, Adriansyah H, "Kenotariatan M. Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris". *Jurnal Ilmiah Hukum Kenotariatan*. 2022.

¹² Herlianti Y, Praptini S, Wahyuningsih SE. *Notary Legal Protection on Making Agreement of Sale and Purchase to The Party*, 2019.

environment that is transparent, reliable, and provides certainty for all parties involved in legal transactions as stated in the deed.¹³

b. Encouraging Legal Compliance

The implementation of the Notary Liability Release Clause can encourage notary to ensure that every document they create meets standards and does not violate applicable norms. With this clause in place, notary become more cautious and meticulous in carrying out their duties because they are aware that compliance with legal regulations is the key to obtaining legal protection provided by the Notary Liability Release Clause.¹⁴ Therefore, the Notary Liability Release Clause serves as an instrument to promote ethical, transparent, and legally compliant notarial practices.¹⁵

3.3. Implications of the Application of the Waiver Clause

1. To the Authentic Deed

The implementation of the Notary Responsibility Release Clause makes the appearing party fully responsible for the accuracy and authenticity of the identities, signatures, and documents shown to the notary. The notary also asserts that the deed created, subsequently read, understood, and approved by the appearing party, is their responsibility, based on the statements and information provided to the notary.

2. Regarding the Notary

The authentic deed created by the notary proves that what is stated in the deed is true according to the statements of the party involved. However, it must be understood that the notary is not responsible for assessing the material truth of the data or information provided by the party in the deed.¹⁶ This aligns with the notary's function of recording or writing down what the party presenting themselves to the notary desire and state. Therefore, there is no obligation for the notary to investigate materially (things) presented by the appearing party before the notary.

The Notary Responsibility Release Clause is not a guarantee of legal certainty for the notary to avoid legal or civil and criminal claims. However,

¹³ Dharsana IMP, Sumardika IN, Wesna PAS, Astara IWW. Potential Conflict Of Land Deed In The Perspective Of Notary Position. *NOTARIIL Jurnal Kenotariatan*. 2021.

¹⁴ Purnama Sari Y, Prabandari D, Rahmawati Budiarmaja W. Reviewing A Notary Ethics Based On Ethical Code As A Notary Profession. Vol 6., 2017.

¹⁵ Andara D, Aburaera S, Baharuddin H. Juridical Analyst Supervision Function of the Notary Supervisory Board in the City of Baubau. *GERECHTIGHEID LAW JOURNAL.*, 2020.

¹⁶ Partomuan Pohan, "Pendapat Publik Berkenaan Dengan Perubahan Aspek Hukum Peseroan Terbatas", *Jurnal Kajian Ekonomi dan Bisnis Nomor 47*, (Jakarta: Yayasan Pusat Pengkajian Hukum, 2001), hlm. 45.

if legal claims implicate the notary regarding the content of the deed, the Notary Responsibility Release Clause can be considered a defense for the notary. The appearing party declares in the deed that they understand the content and take full responsibility for the deed, freeing the notary from legal claims arising from the execution of the deed.

The inclusion of the Notary Responsibility Release Clause protects the notary if it can be proven that the appearing party maliciously approached the notary to create a deed that contradicts the law, morality, and public order by providing false information to the notary. The notary guarantees that the appearing party truthfully states as written in the deed, but the notary does not guarantee the accuracy of the statements made by the appearing party. In this case, the inclusion of the Notary Responsibility Release Clause can protect the notary because the appearing party has declared full responsibility for the deed based on their statements.

3. Regarding the Appearing Party

The inclusion of the Notary Responsibility Release Clause in the deed has an impact on the appearing party, where the clause binds like other clauses in the deed, as agreed upon and signed by the appearing party, witnesses, and the notary. If, after reading the authentic deed, the appearing party has no objections to the inclusion of the Notary Responsibility Release Clause, they are considered to have approved all contents of the deed. However, if the notary is proven to have made errors or omissions in the deed, the appearing party can sue the notary, and the clause is not legally binding. This must be proven through legal channels that the notary made errors or omissions that harmed the appearing party.

4. Regarding Third Party

An authentic deed is evidence with the perfect probative force for the party creating it, heirs, and the party acquiring rights from the authentic deed. However, against the third party, the authentic deed does not have perfect probative force; it is only considered evidence whose assessment is left to the judge's discretion.¹⁷ The inclusion of the Notary Responsibility Release Clause, on one hand, can protect the notary but does not mean the notary is immune to legal claims from a third party. The notary only guarantees authenticity to a third party regarding:¹⁸

- a. The date of the deed;

¹⁷ M. Nur Rasaid, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika, 1996), hlm 38.

¹⁸ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, cet.3, (Jakarta: Erlangga, 1996), hlm. 53.

- b. The signatures in the deed;
- c. The identities of the appearing party (comparators);
- d. What is stated in the deed is what the appearing party explained to the notary to be included in the deed, while the truth of the statements of the party is known precisely between the parties themselves.

These four aspects are essential in the deed and fall under the notary's responsibility. The third party cannot sue the notary except for the above four reasons, especially regarding the deed's content, which is not the notary's responsibility because the notary only records the statements and information provided by the appearing party.

The inclusion of the Notary Responsibility Release Clause is not prohibited, provided that the party in the deed agrees and approves the inclusion of this clause in the authentic deed. The notary must read the deed in the presence of the appearing party, attended by at least two witnesses, and signed on the spot by the appearing party, witnesses, and notary. If the appearing party object or disagree with the inclusion of the clause, the clause cannot be included in the deed.

In a case, a notary was involved in a civil claim for negligence in researching and verifying documents, resulting in financial loss to the involved party. This notary openly admitted their mistake and referred to the agreed-upon Notary Responsibility Release Clause. The court must carefully evaluate this case, considering the level of the notary's negligence, the extent to which the Notary Responsibility Release Clause can be applied, and how its application can be declared fair without sacrificing the rights of the aggrieved party. The court's consideration should also encompass the suitability of applying the Notary Responsibility Release Clause with the principles of justice. Thus, the court must carefully consider whether the Notary Responsibility Release Clause reflects appropriateness and fairness in cases like this, where notarial negligence has significant financial consequences.¹⁹

The court's consideration should also encompass the appropriateness of applying the Notary Liability Release Clause by the principles of justice. This ensures that the rights of the aggrieved party remain protected while the notary receives reasonable protection. Consequently, the court must carefully consider whether the Notary Liability Release Clause reflects appropriateness

¹⁹ Sari RP, Gozali DS. NoLaJ Implikasi Hukum Akibat Kelalaian dalam Pembuatan Surat Kuasa Membebaskan Hak Tanggungan dalam Perjanjian Kredit Perbankan. 2022.

and fairness in cases like this, where the notary's negligence has significant financial consequences.²⁰

An examination of the court's decision in such cases reflects a diverse approach to the application of the Notary Liability Release Clause. There are considerations emphasizing that the clause cannot provide immunity for intentional actions involving notarial negligence.²¹ There are also considerations regarding the context of negligence and whether the Notary Liability Release Clause can be applied fairly in line with the principles of justice.

In cases where a notary faces criminal charges related to document forgery in the creation of an authentic deed, the form of legal protection regulated by the Notary Law can be explained as follows:

- 1) When investigators, public prosecutors, or judges require the retrieval of a copy of the deed or the summons of the notary for legal proceedings, the Honorary Council of Notary plays a crucial role. In the context of obtaining a copy of the deed, the Honorary Council of Notary can approve or reject such a request, ensuring that the legal process can proceed without jeopardizing the continuity of the notary's duties.²²
- 2) If the notary needs to be summoned for an examination related to the deed they created, approval from the Honorary Council of Notary becomes a primary requirement. This indicates that summoning the notary for examination must involve internal control from the notary's professional institution, ensuring the continuity of the notary's duties while safeguarding the rights and interests of the notary in facing the related legal process.²³
- 3) The legal protection provided by the Honorary Council of Notary includes special authority to grant or deny approval to investigators wishing to summon the notary. In giving this approval, the Regional Supervisory Council must comply with legal rules and procedures stipulated in the Regulations of the

²⁰ Yuridis A, Terhadap G, Yang N, et al. Analisis Yuridis Gugatan Terhadap Notaris Yang Diduga Melakukan Perbuatan Melawan Hukum Dengan Menahan Sertipikat Hak Atas Tanah Milik Penghadap (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor 976/PDT.G/2019/PN.JKT.BRT). 2021. <https://scholarhub.ui.ac.id/notary/vol3/iss3/17>

²¹ Dwi Cahyani Fauzal N. Akibat Perbuatan Melawan Hukum Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Notaris (Studi Kasus Putusan Pt Bandung Nomor 256/PDT/2020/PT.BDG).; 2021. <https://www.hukumonline.com/klinik/detail/ulasan/lt570f5347ae286/adakah-masalah-hukum->

²² Fainnadya O, Kaligis SB, Aling DF, Lembong RR. Aspek Perlindungan Hukum Bagi Notaris Terhadap Malpraktek Dalam Pembuatan Akta 1.; 2022.

²³ Tabah MJ. Kekuatan Pembuktian Berita Acara Pemeriksaan Saksi Sebagai Alat Bukti dalam Persidangan. *Syntax Literate ; Jurnal Ilmiah Indonesia*. 2021.

Minister of Law and Human Rights of the Republic of Indonesia. This ensures that the process of summoning the notary aligns with prevailing legal norms.²⁴

Therefore, the involvement of the Honorary Council of Notary in granting approval or rejecting investigator requests creates a balanced mechanism of legal protection, acknowledging the seriousness of the alleged violation and maintaining a balance between the notary's professional obligations and the individual rights of the notary in facing the related legal process.

4. Conclusion

In carrying out their duties as Public Official who creates authentic deeds, a notary is allowed to include a Liability Release Clause in every authentic deed they produce. This serves as a form of legal protection guaranteeing the notary's immunity from legal issues that may arise concerning the accuracy of data or information provided by the party appearing before the notary in the creation of their deeds. The inclusion of this clause is permissible as long as it is agreed upon by the party to be included in the deed, thus giving the clause legal validity equivalent to other clauses in the deed and binding the party involved.

The inclusion of the Notary Liability Release Clause can shield the notary from the ill intentions of the party deliberately creating deeds that contradict the law, morality, and/or public order. The inclusion of this clause is by no means intended to evade responsibility if the notary is proven to have committed negligence, violations, actions causing harm, or criminal acts in the execution of their duties. Instead, it is a preventive measure to avoid legal consequences. Any negligence or mistakes made by the notary must be proven through formal evidence, either from the organization overseeing the notary (Regional/Provincial/Central Supervisory Council, Honorary Council of Notary, Ethics Council), or through a legally binding court decision.

The notary is obligated to be accountable for any negligence or errors that result in losses for the party involved. Accountability may take the form of reimbursing costs, providing compensation, interest, and administrative, civil, or criminal sanctions as stipulated by applicable regulations. After a thorough analysis of the legal, ethical, and practical aspects of the Notary Liability Release Clause, it can be concluded that the application of this clause is necessary as a risk mitigation strategy in the notary profession. This clause serves not only as a protective instrument for the notary but also as an effort to maintain a balance

²⁴ Raditya Priandhana A. *Perlindungan Hukum Terhadap Notaris Dalam Proses Penyidikan (Studi Putusan Mahkamah Konstitusi Nomor 16/PUU-XVIII/2020)*.; 2021. <https://scholarhub.ui.ac.id/notary>

between professional responsibility and the protection of parties involved in legal transactions.

5. Recommendation

The implementation of the Notary Liability Release Clause is a response to existing issues, with the caveat that its application should be preceded by careful and meticulous conduct by the notary in creating deeds by the procedures outlined in the Legislation and Notary Ethic Code. Legal protection through the implementation of the Notary Liability Release Clause can only be achieved when the notary adheres to legal regulations. Therefore, the role of the Notary Liability Release Clause as an instrument to encourage ethical, transparent, and legally compliant notarial practices can be effectively realized when there is compliance with legal standards.

References

- A. Raditya Priandhana. Perlindungan Hukum Terhadap Notaris Dalam Proses Penyidikan (Studi Putusan Mahkamah Konstitusi Nomor 16/PUU-XVIII/2020).; 2021. <https://scholarhub.ui.ac.id/notary>
- A, Yuridis, Terhadap G, Yang N, et al. Analisis Yuridis Gugatan Terhadap Notaris Yang Diduga Melakukan Perbuatan Melawan Hukum Dengan Menahan Sertipikat Hak Atas Tanah Milik Penghadap (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor 976/PDT.G/2019/PN.JKT.BRT). 2021. <https://scholarhub.ui.ac.id/notary/vol3/iss3/17>
- Adji, Habib. Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris. (Bandung: Refika Aditama, 2014), hlm. 88.
- Analisis Yuridis Gugatan Terhadap Notaris Yang Diduga Melakukan Perbuatan Melawan Hukum Dengan Menahan Sertipikat Hak Atas Tanah Milik Penghadap (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor 976/PDT.G/2019/PN.JKT.BRT).2021.<https://scholarhub.ui.ac.id/notary/vol3/iss3/17>
- B. Pratama. Warsito H, Adriansyah H, “Kenotariatan M. Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris”. Jurnal Ilmiah Hukum Kenotariatan. 2022.
- Budiono, Herlien. Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan buku ketiga, (Bandung: Citra Aditya Bakti, 2015), hlm. 286.
- Christine, Implikasi Klausula Pembebasan Tanggung Jawab (Asas Eksonerasi) pada Akta Notaris, Tesis Magister Kenotariatan, Fakultas Hukum Universitas Indonesia, hlm. 38.
- D. Andara, Aburaera S, Baharuddin H. Juridical Analyst Supervision Function of the Notary Supervisory Board in the City of Baubau. GERECHTIGHEID LAW JOURNAL., 2020.

- Hadi, Mudofir, "Pembatalan Isi Akta Notaris Dengan Putusan Hakim", Varia Peradilan Tahun VI Nomor 72, September, 1991, hlm. 142-143.
- Hendra, Rahmad. "Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru", Jurnal Ilmu Hukum Volume 3 No. 1.
- IMP, Dharsana, Sumardika IN, Wesna PAS, Astara IWW. Potential Conflict Of Land Deed In The Perspective Of Notary Position. NOTARIIL Jurnal Kenotariatan. 2021.
- MJ, Tabah. Kekuatan Pembuktian Berita Acara Pemeriksaan Saksi Sebagai Alat Bukti dalam Persidangan. Syntax Literate, Jurnal Ilmiah Indonesia. 2021.
- N, Dwi Cahyani Fauzal. Akibat Perbuatan Melawan Hukum Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Notaris (Studi Kasus Putusan Pt Bandung Nomor 256/PDT/2020/PT.BDG).; 2021.
<https://www.hukumonline.com/klinik/detail/ulasan/lt570f5347ae286/adakah-masalah-hukum->
- Nico, Tanggung Jawab Notaris Selaku Pejabat Umum, (Yogyakarta: Centre For Documentation and Studies of Business Law, 2003), hlm. 250.
- O, Fainnadya, Kaligis SB, Aling DF, Lembong RR. Aspek Perlindungan Hukum Bagi Notaris Terhadap Malpraktek Dalam Pembuatan Akta 1.; 2022.
- Pohan, Partomuan. "Pendapat Publik Berkenaan Dengan Perubahan Aspek Hukum Peseroan Terbatas", Jurnal Kajian Ekonomi dan Bisnis Nomor 47, (Jakarta: Yayasan Pusat Pengkajian Hukum, 2001), hlm. 45.
- Rasaaid, M. Nur, Hukum Acara Perdata, (Jakarta: Sinar Grafika, 1996), hlm 38.
- RP, Sari, Gozali DS. NoLaJ Implikasi Hukum Akibat Kelalaian dalam Pembuatan Surat Kuasa Membebaskan Hak Tanggungan dalam Perjanjian Kredit Perbankan. 2022.
- S, Koos. "The Digitization of Notarial Tasks - A Comparative Overview and Outlook of 'Cyber Notary' In Indonesia and Germany". The Indonesian Journal of Socio-Legal Studies. 2023.
- Subekti, Hukum Pembuktian, (Jakarta: Intermasa, 2005), hlm. 17.
- Tobing, G.H.S. Lumban. Peraturan Jabatan Notaris, cet.3, (Jakarta: Erlangga, 1996), hlm. 53.
- Y. Herlianti, Praptini S, Wahyuningsih SE. Notary Legal Protection on Making Agreement of Sale and Purchase to The Party, 2019.
- Y. Purnama Sari. Prabandari D, Rahmawati Budiarmaja W. Reviewing A Notary Ethics Based On Ethical Code As A Notary Profession. Vol 6., 2017.