Legal Responsibilities of Notaries In The Preparation of Sale and Purchase Deed Related To Fisheries Crimes

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Abstract

The legal responsibility of notaries in making sale and purchase deeds related to fisheries crimes. Fisheries crimes, such as illegal fishing, have a significant impact on marine ecosystems and the national economy. In practice, notaries are often involved in the preparation of deeds of sale and purchase agreements that may be related to the proceeds of the crime. This study uses a normative juridical method with a legislative approach and case studies to evaluate aspects of notary legal responsibility. The results of the study show that notaries have a legal obligation to ensure the legality of the object of the transaction, and can be held accountable if they are negligent in carrying out these duties.

I. Introduction

Fisheries crimes, especially illegal fishing, have become a serious problem in Indonesia. This activity not only harms the economic sector, but also damages the marine ecosystem. Illegal fishing perpetrators often carry out transactions to buy and sell their catch through legal intermediaries, such as notaries. Based on Law No. 2 of 2014 concerning the Notary Position, notaries have an obligation to ensure that every deed they make is in accordance with applicable law and does not conflict with the public interest. However, in practice, the role of notaries is often questioned when they are involved in the preparation of deeds related to goods obtained through fisheries crimes. The issue that will be discussed in this article is the extent of notary legal responsibility in making sale and purchase deeds related to fisheries crimes, and how preventive measures can be applied to protect notaries from potential legal sanctions.

However, in recent years, crimes in the fisheries sector, especially illegal fishing, have become a serious threat to the sustainability of marine resources and fisheries economy. Illegal fishing is not only economically detrimental, but also threatens the sustainability of the marine ecosystem and results in the destruction of the fisheries legal order in Indonesia.

Illegal fishing activities are often followed by illegal transactions to buy and sell fishery products. The transaction is sometimes facilitated by a sale and purchase agreement deed made by a notary. According to Law No. 2 of 2014 concerning the Notary Position, a notary has the authority to make an authentic deed related to the sale and purchase agreement. However, in carrying out their duties, the notary must ensure that the agreed object does not come from the proceeds of criminal acts, including illegally obtained fishery products. Notaries as public officials have a great legal responsibility in ensuring the legality of the

objects listed in the deed they make.

If the notary is negligent or not careful in verifying the validity of the object of the agreement, such as fishery products from illegal fishing activities, then the notary can be subject to legal sanctions. The notary's liability in this case is not only limited to the civil aspect, but can also extend to the criminal aspect if it is proven that he participated in illegal activities. Therefore, it is important to study further the legal responsibility of notaries in making sale and purchase deeds related to fisheries crimes. How notaries must carry out their duties in accordance with the *prudential principle* and verification of the legality of the transaction object is the main focus in this research.

This phenomenon is relevant because there are still many notaries who are not aware of the importance of verifying the origin of the object of the transaction, especially in the context of the fisheries sector which is often vulnerable to illegal practices. Therefore, this research is expected to contribute to strengthening the law enforcement aspect, especially within the scope of responsibility of notaries as public officials involved in potentially unlawful transactions.

Research Method

This study uses a normative juridical method, where the main sources used are laws and regulations, doctrines[1], and court decisions related to the responsibility of notaries in making deeds. Secondary data is obtained from relevant literature, including journals, books, and legal articles that address the topic of illegal fishing and the role of notaries. The legislative approach and case studies are used to evaluate the application of the law to the responsibility of notaries in the context of fisheries crimes.

Results and Discussion

[1] Eka NAM Sihombing, Cynthia Hadita, *Legal Research* (Malang: Setara Press, 2022).

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1. **Responsibilities of Notaries Based on the Law on Notary Positions**
2. Based on Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Notary Position, notaries are obliged to make authentic deeds related to all agreements and legal actions requested by the parties. This obligation includes verification of the legality of the object of the transaction on which the deed is based. If the notary neglects to check the legality of the object, he can be held legally liable. For example, if the object of the sale and purchase agreement is the result of illegal fishing, the notary may be considered to have participated in an unlawful transaction.
3. Notaries as public officials have an important role in making authentic deeds that bind the parties in a legal transaction. Based on Law No. 2 of 2014 concerning the Notary Position, notaries have the authority to make authentic deeds that provide legal certainty for the parties. However, this authority is also followed by a great responsibility in ensuring that every transaction outlined in the deed is within the legal corridor. Article 15 paragraph (1) of Law No. 2 of 2014 emphasizes that notaries have the authority to make authentic deeds regarding all acts, agreements, and provisions required by law or desired by interested parties, as long as the making of the deed is not exempted to other officials or other persons stipulated by law.
4. In this context, the notary is obliged to ensure that the object of the agreement, including in the case of buying and selling fishery products, is legal and does not conflict with the applicable law. This obligation is in line with the prudential principle that must be held by every notary in carrying out his duties. The

notary must be able to ensure that the object of the agreement is not an item derived from a criminal act, including illegal fishery products. If the notary is negligent in carrying out this principle of prudence, then he can be subject to sanctions both civil and criminal. For example, if the proceeds of illegal fishing are sold through an agreement facilitated by a notary, then the notary can be held legally liable for participating in legalizing an unlawful transaction.

5. Furthermore, Article 16 paragraph (1) of Law No. 2 of 2014 emphasizes that notaries are obliged to act honestly, thoroughly, independently, and maintain the interests of interested parties fairly. This shows that the notary is not only obliged to make a valid authentic deed, but also responsible for checking and ensuring the correctness of every fact and data submitted by the parties. In some cases, the notary's negligence in verifying the validity of the object of the agreement can have serious legal consequences. Notaries who intentionally or unintentionally involve themselves in transactions related to the proceeds of criminal acts, such as illegal fishing, can be subject to administrative, civil, and criminal sanctions. For example, in the case of an agreement to buy and sell illegal fishery products, the notary can be considered negligent because he did not verify the legality of the agreed fishery products.
6. According to Sudikno Mertokusumo, the notary's obligation to act carefully and check the legality of the agreed object is part of his responsibility as a public official. The Notary must ensure that every agreement it facilitates is in accordance with the applicable laws and regulations. Failure to fulfill this responsibility can put a notary in a difficult position, both legally and professionally.[2] Furthermore, notaries also have a moral responsibility not to legitimize transactions that can harm the state, such as illegal fishing that

[2] Sudikno Mertokusumo, *Legal Discovery: An Introduction*, (Yogyakarta: Liberty, 2007), p. 55.

damages marine ecosystems and threatens the economic sustainability of fisheries. Therefore, it is important for notaries to always update their legal knowledge and collaborate with relevant agencies to ensure that each object of agreement made in the deed has clear and legal legality in the eyes of the law.

7.

8. **Fisheries Crimes and Their Impact on Transaction Legality**
9. Illegal fishing is a serious violation of Law No. 31 of 2004 concerning Fisheries, which has been amended by Law No. 45 of 2009. Illegal fishing activities not only damage natural resources but also have an impact on the integrity of legal transactions, especially in the context of buying and selling illegal fishery products. According to Article 33 of the Fisheries Law, anyone who trades in illegally obtained fishery products can be subject to criminal sanctions. Therefore, any deed related to the proceeds of such illegal activities can be considered legally defective.
10. Fisheries crimes, especially illegal fishing, are one of the serious forms of crime in Indonesia. Illegal fishing involves fishing that is carried out without a permit, outside the permitted area, or by using tools and methods that damage marine ecosystems. This practice not only violates national law, but also international law aimed at protecting the sustainability of fishery resources. The impact of illegal fishing is wide-ranging, ranging from economic losses to disruption to marine ecosystems that can damage environmental sustainability and harm local communities that depend on fisheries. Juridically, illegal fishing violates the provisions of Law No. 31 of 2004 concerning Fisheries, which has been amended by Law No. 45 of 2009. This law strictly regulates legal fishing procedures, including permits and permitted fishing gear. Article 27 of Law No. 31 of 2004, for example, stipulates that any fishing carried out without a permit is

considered a criminal offense, and the proceeds of such activities are considered the proceeds of a crime. Therefore, illegally obtained fishery products should not be traded and the transaction of buying and selling such products is considered legally invalid. In the context of transaction legality, the proceeds of fishery crimes such as illegal fishing are considered "goods proceeds of crime" or "evidence".

11. According to Achmad Ali, evidence of a criminal act cannot be a valid transaction object in civil law. This means, if a person conducts a transaction to buy and sell goods from illegal fishing, either directly or through an intermediary such as a notary, the transaction is legally defective and can be null and void. In other words, the transaction does not confer any legal rights on the buyer or the parties involved in the agreement. Furthermore, the impact of fisheries crimes on the legality of transactions is also related to the principle of prudence in contracts.[3]
12. Sudikno Mertokusumo stated that every contract must be based on a legitimate object and in accordance with laws and regulations. If the object of the contract is the proceeds of a crime, such as fish obtained through illegal fishing, then the contract does not meet the requirements for the validity of the agreement according to Article 1320 of the Civil Code. One of the conditions for the validity of the agreement is the existence of a "halal causa", which in this case is not fulfilled if the object of the agreement is the goods of crime. In addition, notaries involved in the preparation of sale and purchase deeds for illegal fishery products also have the potential to be held legally liable.[4]
13. Peter Mahmud Marzuki explained that the notary is obliged to ensure that the

[3] Achmad Ali, *Uncovering Legal Theory and Judicial Prudence*, (Jakarta: Kencana, 2009), p. 110.
[4] Sudikno Mertokusumo, *Legal Discovery: An Introduction*, (Yogyakarta: Liberty, 2007), p. 72.

object of the transaction in the deed he makes does not violate the law. If the notary is negligent in verifying the legality of the agreed object, he or she can be subject to legal sanctions both civil and criminal. Therefore, it is important for notaries to always verify the documents and the origin of the object of the transaction, especially in cases involving the fisheries sector which is often vulnerable to illegal activities. In this case, illegal fishing also has significant legal implications for the parties involved in the transaction.[5]

14. Satjipto Rahardjo argued that the law must be seen as an instrument to protect the interests of the wider community, including in maintaining the preservation of natural resources such as fisheries. Therefore, any transaction related to the proceeds of illegal fishing is not only a violation of laws and regulations, but also contrary to the principles of justice and the public interest. This makes the notary, merchant, or buyer involved in the transaction potentially face serious lawsuits and sanctions.[6]
15.

Prevention and Legal Protection Efforts for Notaries to Protect Themselves from Involvement in Illegal Fishing Transactions

Notaries must be more careful in examining documents and the origin of the object of the agreement. One of the preventive efforts that can be done is to ask more in-depth questions to the parties regarding the origin of the agreed goods, as well as verify related documents. In addition, notaries can work with authorities, such as the Ministry of Maritime Affairs and Fisheries, to ensure that the agreed object is not the result of illegal fishing activities.

As a public official who is given the authority to make authentic deeds, notaries

[5] Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2010), p. 135.
[6] Satjipto Rahardjo, *Law in the Universe of Order, (Yogyakarta: Genta Publishing, 2010), p. 92.*

have a great legal responsibility in every transaction involving the parties who use their services. However, in practice, notaries are often faced with situations where the object of the facilitated sale and purchase agreement may be derived from a criminal act, such as illegal fishing. To avoid involvement in unauthorized transactions and potentially bring legal sanctions, notaries must make various preventive efforts and obtain legal protection. This effort is important to maintain the integrity of the profession and ensure that notaries carry out their duties in accordance with the principle of prudence.[7]

Verification of the Legality of the Object of the Agreement One of the preventive efforts that must be carried out by the notary is to verify the legality of the object of the agreement. Article 16 paragraph (1) of Law No. 2 of 2014 concerning the Notary Position states that notaries are obliged to act honestly, thoroughly, independently, and impartially in carrying out their duties. For this reason, the notary must carefully examine the legality of the fishery products that are the object of the sale and purchase agreement. This verification can be done by requesting valid documents related to fishing permits and ensuring that fishery products do not come from illegal fishing activities.[8]

Obligation to Use the Prudential Principle Notaries are required to use the prudential principle in every transaction. This principle requires the notary to assess and consider all legal risks that may arise from a transaction.[9]

Sudikno Mertokusumo emphasized that in making an authentic deed, the notary must understand well the context of the transaction and ensure that there are no illegal elements in the object or agreement. If there is an indication that the fishery

[7] Indra Setiawan, "The Role of Notaries in Transactions Proceeds of Criminal Acts," *Journal of Law and Justice,* Vol. 6 No. 2 (2021), p. 45.

[8] Dwi Hartanto, "Law Enforcement of Illegal Fishing in Indonesia," *Journal of Fisheries and Marine Affairs*, Vol. 8 No. 1 (2020), p. 123.

[9] Siti Nurhidayah, "Legality of Fisheries Transactions and Protection for Consumers," *Journal of Economic Law*, Vol. 9 No. 3 (2022), p. 97.

products that are the object of the transaction come from illegal fishing, the notary must refuse to make a deed related to the transaction. This is to protect the notary from possible legal sanctions if proven to be involved in unlawful activities.[10] Rejection of Illegal Transactions Law No. 2 of 2014 also gives the notary the right to refuse to make a deed if the transaction submitted is not in accordance with applicable legal regulations.

According to Achmad Ali, the notary has the authority to reject the request to make a deed if the transaction is contrary to the law or if the object of the agreement is the proceeds of a criminal act. This refusal is important as a preventive measure so that notaries are not involved in the legalization of illegal transactions, including transactions to buy and sell illegal fishery products.[11]

Collaboration with Notary Agencies can also work with relevant agencies, such as the Ministry of Maritime Affairs and Fisheries (KKP) and law enforcement officials, to ensure that every object of fishery transactions listed in the deed is legal.

This cooperation includes access to data on the legality of fishing permits and reports on illegal fishing activities. According to research conducted by Titik Triqual Tutik, collaboration between notaries and government authorities is very important to prevent the involvement of notaries in transactions related to criminal acts. By obtaining accurate information from relevant agencies, notaries can avoid making deeds that have the potential to involve the proceeds of criminal acts.[12]

Continuing Education and Training As part of legal protection efforts, notaries also need to update their legal knowledge through ongoing education and training. Peter Mahmud Marzuki stated that notaries must continue to update their understanding of legal developments, including laws governing illegal fishing and

[10] Sudikno Mertokusumo, *Legal Discovery: An Introduction*, (Yogyakarta: Liberty, 2007), p. 55.
[11] Achmad Ali, Uncovering Legal Theory and Judicial Prudence, (Jakarta: Kencana, 2009), p. 110.
[12] Tutik Quarterly Point, *Fisheries Law: A Study of Law Enforcement in Indonesia*, (Bandung: Refika Aditama, 2015), p. 63.

fishery transactions. By attending seminars, training, and continuing education, notaries can better understand the legal risks that may arise and can take appropriate preventive steps to protect themselves from involvement in illegal transactions. Legal Protection Through Notary Professional Associations can also take advantage of legal protection provided by professional associations, such as the Indonesian Notary Association (INI).[13]

According to research by Frans Hendra Winarta, the notary professional association can provide legal assistance for its members who face legal problems related to the implementation of their duties, including if the notary is suspected of being involved in transactions resulting from criminal acts such as illegal fishing. This assistance can be in the form of legal advocacy, mentoring, and consultation to protect the rights of notaries and ensure that any alleged involvement in illegal activities can be resolved legally.[14]

The preparation of Standard Operating Procedures (SOPs) Notaries must also have clear Standard Operating Procedures (SOPs) related to the verification of transaction objects and the handling of documents related to fishery products.

Strict and clear SOPs can assist notaries in avoiding involvement in illegal transactions and protecting themselves from possible lawsuits. This SOP must include the stages of checking licensing documents, verification with relevant agencies, and refusal procedures if indications of law violations are found.[15]

[13] Tri Rahayu, "The Principle of Prudence in the Preparation of Sale and Purchase Deeds," *Journal of Notary Legal Studies,* Vol. 5 No. 4 (2019), p. 78.

[14] Frans Hendra Winarta, *Advocacy and Legal Aid in Indonesia*, (Jakarta: Indonesian Lawyers Forum, 2012), p. 88.

[15] Siti Sundari Rangkuti, *State Administrative Law* (Jakarta: Ghalia Indonesia, 2011), p. 140.

Conclusion

Notaries have a significant legal responsibility in ensuring the legality of each transaction object on which the deed is based. In the context of fisheries crimes, notaries must be more careful not to be involved in transactions involving the proceeds of illegal fishing. Failure to verify the legality of the object can result in the notary being held legally liable, both in the form of civil and criminal sanctions.

To reduce the risk of involvement in transactions involving the proceeds of fishery crimes, notaries are advised to: Conduct thorough verification of the object of the agreement agreed in the deed. Developing cooperation with relevant agencies to ensure the legality of the agreed objects. Updating knowledge related to fisheries regulations and related criminal acts, so as to increase prudence in making deeds.

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