



# The Notary's Liability Who Participated Doing Unlawful Acts in Making The Deed of Guarantee Submission Agreement Based on The Case Study of Decision Number 61/PDT.G/2019/PN.GIN

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## ABSTRACT

*A notary is a public official who is authorized by the state to make an authentic deed. If one of the parties feels aggrieved by the deed made by the Notary, that party can sue the Notary for the unlawful act committed. Notaries as public officials who have an important role in people's lives. In carrying out his position, it is not enough for a Notary to only have legal expertise but must also be based on responsibility and appreciation of the nobility of dignity and ethics. Its role and authority are very important for legal traffic in society. Therefore, a notary must carry out his profession professionally, highly dedicated and uphold the dignity and worth of by upholding the code of ethics of a notary. By enforcing the notary's code of ethics, it is very important for the notary to better understand the extent to which the act can be regarded as a violation of the code of ethics, and provide education so that things do not happen that can harm the notary and the community he serves. This study aims to examine the accountability of the Notary to the deed of guarantee delivery agreement that he has made based on Decision Number 61/Pdt.G/2019/PN.Gin. This research uses In this study the legal research method used is normative juridical. The approach used is a statutory approach. The analytical method used is qualitative, and the results of the research used are analytical explanatory. The findings in this study are the responsibility of the notary in making the guarantee agreement deed, proven to have committed an unlawful act and violated the provisions of Article 1365 of the Civil Code. The legal consequences given are the cancellation of the deed and dishonorable dismissal. It is recommended that the notary be more careful in making the deed so that problems do not occur in the future.*

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## ABSTRAK

Notaris merupakan pejabat umum yang diberikan kewenangan oleh Negara dalam membuat akta autentik. Apabila salah satu pihak merasa dirugikan atas akta yang dibuat oleh Notaris, maka pihak tersebut dapat menggugat Notaris atas tindakan perbuatan melawan hukum yang dilakukan. Notaris sebagai pejabat publik yang memiliki peran penting dalam kehidupan masyarakat. Dalam menjalankan jabatannya, seorang Notaris tidak cukup hanya memiliki keahlian hukum tetapi juga harus dilandasi tanggung jawab dan penghayatan terhadap keluhuran martabat dan etika. Peranan dan kewenangannya sangat penting bagi lalu lintas hukum di masyarakat. Oleh karena itu, notaris harus menjalankan profesinya secara profesional, berdedikasi tinggi serta menjunjung harkat dan martabat dengan menegakan kode etik Notaris. Dengan menegakkan kode etik notaris, hal tersebut sangat penting bagi notaris agar lebih memahami sejauhmana perbuatan itu dapat dikatakan sebagai pelanggaran kode etik, dan memberikan edukasi agar tidak terjadi hal yang dapat merugikan notaris serta masyarakat yang dilayaninya. Penelitian ini bertujuan untuk mengkaji pertanggungjawaban Notaris terhadap akta perjanjian penyerahan jaminan yang telah dibuatnya berdasarkan Putusan Nomor 61/Pdt.G/2019/PN.Gin. Penelitian ini menggunakan Dalam penelitian ini metode penelitian hukum yang digunakan adalah yuridis normatif. Pendekatan yang digunakan adalah pendekatan perundang-undangan (statute approach). Metode analisis yang digunakan adalah kualitatif, serta hasil penelitian yang digunakan adalah explanatoris analitis. Penemuan dalam penelitian ini adalah pertanggungjawaban notaris dalam pembuatan akta perjanjian penyerahan jaminan, terbukti melakukan perbuatan melawan hukum dan melanggar ketentuan Pasal 1365 KUHPerdata. Akibat hukum yang diberikan adalah pembatalan akta dan

pemberhentian secara tidak hormat. Disarankan notaris agar lebih berhati-hati dalam pembuatan akta agar tidak terjadi permasalahan dikemudian hari.

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## I. INTRODUCTION

The term treaty comes from the Dutch language, that is, (*overeenkomst* and *verbintenis*). Article 1313 paragraph (1) of the Civil Code states that an Agreement agreement is an act with one or more persons binding itself against one or more persons. (Kitab Undang-Undang Hukum Perdata, n.d.) The provisions of this article are not quite right, because there are some weaknesses that need to be corrected. The weakness is that, it only concerns one-sidedness, the word deed includes also without census and the notion of agreement is too broad. (Muhammad, 1993) An agreement is a legal act based on the word *sepatak* to cause a legal effect. According to subekti, a covenant is an event When a person promises to one or two people who promise each other to carry out a thing. According to Van Dune, an agreement is a legal relationship based on the word agree to cause legal consequences.

A valid agreement is a qualified agreement that has been prescribed by law. Valid agreements can be recognized and *legally concluded contracts*. In carrying out the agreement, it must meet the valid conditions stipulated in Article 1320 of the Civil Code, namely: Consensus; Ability to make an attachment (capacity); A certain thing (object); The cause of the lawful (*causa*).

Agreements that do not meet these conditions will not be recognized by law, even if they are acknowledged by the parties who made them. If the parties acknowledge and abide by the contents of the agreement, but do not meet its conditions, the agreement shall prevail between them. However, if there is one party who does not recognize it, it will cause a dispute and can cancel the agreement. With the fulfillment of the 4 (four) conditions for the validity of the agreement, the agreement will be legally binding for the parties. The first and second terms are referred to as subjective conditions, while the third and fourth conditions are called objective conditions. An agreement that violates subjective terms, the legal effect of which is "*voidable*". The point of being annulled is that as long as the agreement has not been submitted for annulment to the competent Court, then the agreement remains binding between the parties, as is a valid agreement. Whereas an agreement that does not meet the objective requirements, then the legal effect of the agreement is null and void even if the agreement is not submitted for cancellation before the Court, the agreement is considered to have never existed in the first place. In this case, in the eyes of the law there never was and everything related to the treaty was considered to have never existed. (Agus Budiarto dan Gwendolyn Ingrid Utama, 2010) Article 1337 of the Civil Code states that a cause is prohibited what if prohibited by law, or if it is contrary to good decency or public order. (Kitab Undang-Undang Hukum Perdata, n.d.)

As a country of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, Indonesia is obliged to carry out law enforcement that reflects justice, certainty, and the greatest

benefit for the purposes of legal protection and the welfare of the people. In order to support the success of law enforcement, authentic evidence of legal circumstances, events, or actions carried out through a certain position is needed, namely a Notary as a general official. In carrying out his duties and positions, a Notary must comply with existing regulations, namely Law Number 2 of 2014 concerning Amendments to the Law on the Position of Notary Number 30 of 2004 concerning the Position of Notary.

The existence of a notary is based on the needs of the community in making authentic deeds as binding evidence. The role of a notary as a general official is to provide services to the community in making deeds and legal acts that require notary services. The position of a notary as a general official in the middle of society and the important role of a notary in making authentic deeds, it can be said that a notary is a trust position. (Edwar; et. al, 2019) Through deeds made by notaries, it can provide legal certainty to the community of users of notary services. Deeds made by or before a notary can be authentic evidence in providing legal protection to any parties interested in the deed.

In practice, in carrying out his position as a public official, in the making of the deed, not a few notaries may enter false information or side with one of the clients that is not in accordance with the arrangements contained in the Notary Position Act. This can be problematic if the parties are harmed by the deed made by the notary. This study will discuss two problems, namely the notary's responsibility and the legal consequences of the deed made by fraud.

Based on the above problems, the author formulates two legal problems:

- 1) Notarial liability for the deed of guarantee delivery agreement made in the presence of unlawful acts?
- 2) The legal consequences of the notary law on the deed of guarantee delivery agreement made by fraud?

## II. RESEARCH METHODS

This study consists of three parts. The first part is an introduction that contains the background of the problems raised, as well as the systematics of this research. Then in the second part of this study contains a discussion that will discuss the chronology of this research problem, and will analyze the problems raised by the actions of the Notary Position and the Code of Ethics for unlawful acts and notary responsibility for deeds made with fraud. At the end, conclusions and suggestions from this study will be given. In this study, the legal research method used is normative juridical. The approach used is a *statute approach*. The analysis method used is qualitative, and the research results used are analytical explanatory.

## III. RESULT AND DISCUSSION

### 1. Chronology of Problems

The problem that arose in this case started with Mr NL who wanted to find a bank loan, but did not know how. On the advice and recommendation of his friends, he was introduced to Mr. IBN. In the meeting between Mr. NL and Mr. IBN agreed to help to get the loan but there was one condition which, Mr. NL had to give a guarantee of the object which must be reversed first in the name of Mr. IBN. Mr. IBN explained that the process to reverse the name is only a formality, and later on the disbursement of the loan money will be fully handed over to Mr. NL. Therefore, Mr. NL agreed with

his offer and immediately went to the AAG Notary to make and sign the Deed of Sale and Purchase Number 205/2014 recorded 7-10-2014.

The guarantee of dependent rights to the property of third parties will not be a problem if the debtor does fulfill the achievements as promised in the credit agreement. However, it would be very detrimental if the grantor of dependent rights who were not debtors of default on land and in his right did not belong to the debtor but belonged to another person who did not know that he had become a debtor because his certificate was made a dependent right.(Valayvi, 2016).

The sale and purchase carried out by Mr. NL and Mr. IBN was merely an engineering and the engineering was carried out with the knowledge and consent of Mr. NL. However, to pair dependent rights is not known to Mr. NL. On 29-09-2014 the loan was disbursed and approved in the amount of Rp. 2,000,000,000;- (two billion rupiah) with a guarantee of certificate of title to land owned by Mr. IN. however, what was handed over to Mr. IN from Mr. IBL was only Rp. 1,800,000,000 (one billion eight hundred million rupiah), while rp. 200,000,000 (two hundred million rupiah) for administrative costs and installments for the next 3 months. For the loan, Mr. IN routinely desecrated the loans handed over to Mr. IBL, but apparently the money that had been paid regularly was not paid by Mr. IBL so Mr. IN was sought after by the collection officer from the Bank who disbursed the loan. This legal fact proves that Mr IBL only borrowed the name only so that the one who was sought and collected to pay the loan was Mr. IL.(Putusan Pengadilan Negeri Nomor 61/PDT.G/2019/PN.Gin, n.d.)

As this caused great concern to Mr. IL, therefore Mr. IL sought Mr. IBL to requisition the title to the land which had been reversed, in order to be restored to its original ownership which belonged to Mr. IL again. However, Mr. IBL requested the conditions for the return process on behalf of Mr. IL i.e. requested a sum of Rs. 100,000,000;- (one hundred million) and the request was fulfilled by Mr. IL. Furthermore, the bank made a Credit Agreement between the Bank as a creditor with Mr. IBL and Mr. IL as a debtor with a loan value of Rp. 2,350,000,000;- (two milliard three hundred and fifty million rupiah) with a period of 12 (twelve) months, starting on November 24, 2016 until maturity, november 24, 2017. After that, the money is disbursed and immediately debited for repayment of the IBL Mr. Loan. To reverse the name again, the Bank does not agree if the object of title to the land is reversed in the name of Mr. IL again. Therefore, Mr. IL proposed to reverse the names to his children namely Mr. AKM and Mr. YR.

The Credit Agreement is more of an unnamed agreement (onbenoemde overeenkomst) because the specific arrangements regarding credit agreements have not been specifically regulated in the Law related to Banking.(Malayu S. Hasibuan, 1994) The determination of credit clauses is made based on an agreement between the parties, which contains the form, as well as the clauses agreed by the parties with the relevant bank. Usually, the credit provided by the bank contains risks so that in its implementation it must pay attention to the principle of healthy pre-credit. In order to reduce the impact of these risks, it is usually done to provide credit guarantees in the sense that the bank gives confidence in the debtor's ability and ability to pay off its obligations through a credit agreement.(Oktaviani, 2015).

After the credit agreement was signed, the Bank and Mr. IBL then invited Mr. IBL, Mr. NL, Mr. AKM and Mr. YR to sign the Deed of Sale and Purchase Number 20. In signing this deed, the AAG Notary did not read out the entire contents of the deed where in the future Mr. NL, Mr. AKM and Mr. YR knew that the contents of the notarial deed turned out to be different by mutual agreement

between Mr. NL, Mr. IBL and the Bank. As it turned out, the Deed that Mr. AKM and Mr. YR signed was the deed of guarantee delivery agreement, the deed is a pitfall in bad faith from the Bank and the AAG Notary who have known and not taken precautions to do so. And in the deed, the First Party as a creditor, namely the President Director of Bank Tuan IGN, was not present, but in the deed it was written to be present before a Notary.

The parties to the agreement will sign in advance to discuss the content of the agreement to be executed in order to obtain rights. Then if the loan or credit experiences a bottleneck until the borrower does not fulfill the implementation of the agreement, namely experiencing congestion until the borrower does not fulfill the agreement, namely credit repayment, then the debtor's guarantee will be withdrawn by the bank as repayment of the borrower's debt or credit. (Bandem Isadnya; et.al, n.d.) Therefore, the Deed of Agreement for Delivery of Guarantee as Debt Settlement made by Mr. AKM and Mr. YR which was signed before the AAG notary

## 2. Analysis of Notary Liability for The Deed of Guarantee Delivery Agreement Made In The Presence Of Unlawful Acts

Basically, Notaries exist to meet the needs of society in legal relations between them. Everything that is written and contended by him is true which the Notary is a strong document maker in a legal process. (Kie, 2007) As a general officer, notaries have the authority to make authentic deeds. He must be careful in making deeds. Thus, a Notary is responsible for carrying out the trust given to him by always upholding legal ethics and the dignity and nobility of his position, because if this is ignored, he will get a legal problem that causes the Notary to be dismissed.

In the deed appointed in this study, the deed is meant to be a *partij* deed. The deed contains about unlawful acts justified by the same Notary in which case the Notary does not take precautions in the making of the deed. In this case, the AAG Notary in the reading of the deed does not read out the entire contents of the deed without seeking prior approval to all the parties. In Article 10 Paragraph 7 of the Notary Position Law (hereinafter referred to as UUJN), it is explained that it is permissible for the deed not to be read if the plaintiffs want it. (Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.) In this case, the AAG Notary also violated Article 43 paragraph (2) of the UUJN where, he did not explain the contents of the deed to be signed by the parties which caused material losses suffered by Mr. NL. What the AAG Notary has done is not in accordance with Article 16 paragraph (1) letter (a) of the UUJN, where the AAG Notary sided with Mr. IBN and the Bank as creditors to carry out the unlawful act.

Referring to the Civil Code, the AAG Notary has committed an unlawful act regulated in Article 1365. For these acts, AAG Notaries must undergo consequences which require compensation for losses due to actions committed by AAG Notaries. Hoge Raad mentioned that there are 4 (four) criteria for unlawful acts, including: Contrary to the legal obligations of the perpetrator; Violates the subjective rights of others; Violating the rules of morality; Contrary to the principles of propriety, thoroughness, and careful attitude that a person should have in association with a citizen of society or towards the property of others. (Setiawan, 1992)

When linked to a case, an AAG Notary has been contrary to legal obligations, violated the subjective rights of others and is contrary to the principles of propriety, thoroughness and carefulness that a Notary should have. In this case also, the Notary may be given sanctions regulated by Article

16 paragraph (1) letter (d) i.e. dismissal with disrespect.(Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.).

### 3. Legal Consequences of Notaries Against Deeds of Guarantee Delivery Agreements Made By Fraud

Notaries as general officials who are authorized to make authentic deeds must be truly professional in order to create certainty, order, and legal protection desired by the interested so as to guarantee certainty about the rights and obligations of the parties and for society as a whole. In this case, the AAG Notary did not read out the entire contents of the deed wherein in the future Mr NL, Mr. AKM and Mr. YR learned that the contents of the notarial deed turned out to be different by mutual agreement between Mr NL, Mr IBL and the Bank. In reality, the deed that Mr. AKM and Mr. YR signed was the Deed of Guarantee Surrender Agreement as a Debt Settlement. This is a pitfall in bad faith from the Bank and AAG Notaries who have known and have not taken precautions to do so.

And in the deed, the First Party as a creditor, namely the President Director of Bank Tuan IGN, was not present, but in the deed it was written to be present before a Notary. In this case, the AAG Notary is not in accordance with Article 16 paragraph (1) letter a and M i.e. the AAG Notary is siding to carry out an unlawful act, and does not read the deed without the consent of the other parties. Deeds made by notaries must meet the requirements that have been regulated by the Civil Code. There are two conditions for the validity of the agreement, namely subjective and objective conditions consisting of the words agree and being able to act to commit acts against the law. According to Ismail Saleh, there are four points that should be considered by a Notary, including:(Supriadi, 2015) In carrying out his duties, a Notary must have a steady moral integrity; The notary must be honest, not only to himself but also to his clients; The notary must be aware of the limits of his powers. He is obliged to comply with the provisions of the applicable law; A Notary whose Pancasila should stick to an essential sense of justice.

The deed drawn up by the notary must have the will or will of each party. If the wishes and requests of the parties are absent then the notary will not make a deed. As authorized general officials, the parties face the notary in the making of the deed, convey the particulars and also provide the necessary letters or documents. After that, the parties asked the notary to pour the information given into the deed and then the notary made the deed into the form stipulated by the Notary Position Law. In this case, the AAG Notary did not do this which, the AAG Notary is not neutral because making a deed only follows the intention of one of the parties and launches an unlawful act.

The legal consequence that can be imposed by an AAG Notary is the cancellation of the deed of guarantee delivery agreement. Referring to the subjective conditions of an agreement, it does not meet the "agreed" requirement. The parties are said to agree that in making the deed it must be in the agreement of both parties and consciously. In this case, if reviewed through the side of ethical sanctions, according to Article 16 paragraph (1) letter (d) AAG Notary can be imposed disrespectful dismissal as a result of his actions.(Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.) Not only that, according to Article 1365 of the Civil Code, AAG Notaries also get compensation sanctions due to making deeds that are not suitable and only unilateral weight in making deeds.

#### IV. CONCLUSION

1. The responsibility of the AAG Notary in making the deed of guarantee delivery agreement, was proven to have committed an unlawful act and violated the provisions of Article 1365 of the Civil Code. This is contrary to the principle of propriety and prudence. In this research, AAG Notaries also did not read out deeds without the consent of other parties. In addition to civil sanctions there are also administrative sanctions. As for administrative sanctions, AAG Notaries can be dismissed disrespectfully because in carrying out their obligations they have violated the Notary code of ethics and violated the provisions contained in the Notary Position Law.
2. After being decided by the Panel of Judges, as a result of the law of making a deed of guarantee delivery agreement, the deed is null and void and is considered to have never existed. This is based on the non-fulfillment of the subjective conditions of "agree", the objective requirement of "lawful cause" and the non-fulfillment of the material requirements of a trade.

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