



The Responsibility Of A Notary For Negligence In Handling Business Licensing Through Oss-Rba

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Abstract: Based on the results of the study, it can be concluded: First: With the granting of a power of attorney by a business actor to a notary, it clearly creates a legal relationship in which the notary acts on behalf of all the legal interests of the business actor, gives authority and responsibility, as well as gives birth to rights and obligations that arise between the two parties. A notary who carries out the business licensing process through the OSS system can be held accountable based on a power of attorney agreement that creates rights and obligations for the principal and the attorney. The responsibilities that arise are civil responsibility and moral responsibility related to the notary's code of ethics. Second, for the occurrence of typographical errors in the minutes of the deed, these errors can be corrected by making changes or by replacing, adding, crossing out, or inserting words. These changes may only be made to the contents of the deed, not at the beginning and end of the deed. The change is valid if it is initialed or given other validation marks by the signer, witness, and notary. The notary's responsibility for the occurrence of typographical errors in the minutes of the deed that have been issued copies is to directly make changes to the draft of the deed by reprinting it if the facing is still available and there is office equipment to support it. However, if the appearers are no longer present before the notary, the notary must contact the appearers again to make improvements to the deed (not changes).

Keywords: Negligence, Responsibility, Business License.

1. Introduction

As time progresses and digitalization advances, licensing has also undergone a revolutionary evolution with the introduction of an electronic licensing system to simplify the licensing process (Harto et al., 2023), (Marmoah & Sukmawati, 2024). This is expected to provide ease to the business community, encouraging more enthusiasm in obtaining licenses. The increasing number of business actors obtaining licenses will also make it easier for the government to supervise activities and prevent negative impacts on society and the environment (Redi, Marfungah, Fansuri, Prawira, & Lafentia, 2022), (Assegaf, Juliani, & Sa'adah, 2019). To facilitate this, the government has implemented an electronic-based licensing registration system known as the Online Single Submission (OSS), as regulated in the Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Integrated Business Licensing Services Electronically (Istiqomah & Purba, 2024), (Noor, Prabowo, Kusnadi, & Diansyah, 2023). In 2020, the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation was enacted, partly to enhance the investment ecosystem and business activities. As a result, Government Regulation No. 24 of 2018 was revoked and replaced with the Government Regulation of the Republic of Indonesia Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. In establishing a new PT, business actors must establish the company with two or more people, with an authentic deed made by a notary, as regulated in Article 7, Paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies, amended by Article 109 of the Fifth Part of the Limited Liability

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Received: Mar 30, 2025;
Revised: Apr 09 2025;
Accepted: Apr 25, 2025;
Published: Apr 30, 2025;



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Company Law of Law Number 11 of 2020 concerning Job Creation, which states: “(1) A company is established by 2 (two) or more people with a notarial deed made in Indonesian (Nomor, 11AD).”

After the PT's deed of establishment is made by the notary and registered in the AHU ONLINE system, the notary submits the deed of establishment along with the Decree of the Minister of Law and Human Rights to the PT, and the notary's work ends there (Suryawan & Putra, 2020), (Danianto, 2022). However, PT. SUMBER NYALA PUTRA PANDAWA (hereinafter referred to as PT. SNPP) requested the notary to also handle the business licensing process so that everything could be completed simultaneously, allowing the business to operate without missing any required licenses. In this case, the notary does not have any authority under the regulations to handle business licensing (Yalala, 2021), (Saputra, 2023). However, PT. SNPP had more trust in the notary to process the business licensing because the notary was more familiar with the OSS system, which was also linked to the AHU ONLINE system. Therefore, PT. SNPP granted a Power of Attorney to the notary to handle the business licensing, specifically to obtain the Business Identification Number (NIB) (Agustina, 2022), (Khaidar, 2023).

However, a notary is a human being and, like everyone else, is not free from errors and mistakes (Notaris, n.d.), (Napouling, 2022). These errors in the drafting of the deed may lead to misinterpretations of the content and intent of the deed. In this study, titled “THE RESPONSIBILITY OF A NOTARY FOR NEGLIGENCE IN HANDLING BUSINESS LICENSING THROUGH OSS-RBA,” the author formulates two main problems as follows: What is the notary's responsibility in handling business licensing through OSS-RBA? And What is the form of resolution for a notary's negligence in the authentic deed of establishment of a PT for business licensing through OSS-RBA.

2. Materials and Methods

Legal research is essentially an activity based on specific methods, systematics, and reasoning aimed at studying one or more specific legal phenomena through analysis (Hehanussa et al., 2023), (Susiani, 2024). The purpose of the research is to gain knowledge about a particular phenomenon, which will help in formulating the problem. The approach method used in this writing is a normative method. The normative research method is a legal research method that utilizes legal sources obtained through the statutory approach (statute approach). This research focuses on legal principles and literature materials in the form of laws, regulations, journals, and other resources related to the issues to be discussed (Benuf & Azhar, 2020), (Yuhandra, 2016).

3. Results and Discussion

3.1 *The Responsibilities of a Notary in Business Licensing Management through OSS-RBA*

In establishing a company, business actors must first create a deed of establishment before a notary. Based on Article 1, Paragraph (7) of the Notary Law (UUJN), a notarial deed is an authentic deed made by or before a notary in accordance with the form and procedures established by this Law. An authentic deed serves as evidence of the validity of any agreements or legal actions contained in it, meaning that the notary's legal product must comply with the procedures for its creation as regulated by legislation. Notaries are also required to adapt to the changes of the global era, as civil law relationships now often involve transactions conducted electronically or online. These transactions are increasingly integrated with each other, for example, through the relationship between the Ministry of Law and Human Rights and the Coordinating

Ministry for Economic Affairs, which is integrated through the latest licensing system, OSS, in accordance with Government Regulation No. 24 of 2018.

Notaries, on the other hand, gain socialization and training from seminars organized by notarial organizations. The OSS-RBA system is integrated with various ministries, meaning it utilizes a unified data system. OSS-RBA also follows the 2020 Indonesian Business Field Classification (KBLI), and entrepreneurs must select the appropriate KBLI code that corresponds to their business activity when registering for a business license. When establishing a business entity, whether it is a legal entity or not, the business goals and activities listed in the deed of incorporation must match the selected KBLI code, as the notary will access the approval of the business establishment through the Directorate General of General Legal Administration's system, known as AHU Online. If the business is a legal entity, such as a Limited Liability Company (PT), it must be registered in the Legal Entity Administration System (SABH). These businesses must update their business goals and activities to align with the 2020 KBLI to integrate with the OSS-RBA system. With the OSS-RBA service system, all business license processes can be handled more easily, quickly, accurately, and efficiently. For companies, the usual requirement is to first establish the legal entity through a notary, while individual businesses only need to use their National Identity Number (NIK). Normatively, notaries do not have the authority to handle business licensing. Based on their experience in managing OSS-RBA licenses, notaries are typically involved in processing various requests, often going back and forth to different government offices. With OSS-RBA, business licenses can be issued to entrepreneurs in a relatively short period—often in less than an hour.

The role of the notary in assisting with business license registration in the OSS-RBA system is limited to registering the business license in the OSS system by helping issue the Business Identification Number (NIB) and the business license. If the business license requires the fulfillment of commitments with ministries or agencies, the notary advises the entrepreneur to handle these matters independently, without further involving the notary. Given that a notary, according to the mandate of the Notary Law (UUJN), is a public official not paid by the government, the notary must uphold their dignity and integrity.

notaries must master the procedures for establishing a PT, from drafting the Deed of Establishment to handling the Ministry of Law and Human Rights' approval and other administrative matters, ensuring that the PT operates with the correct legal standing. Therefore, the legal products issued by the notary must follow the procedures for their creation as regulated by applicable laws and regulations. This means that everything stated in the deed must be assumed to be true unless another party can prove otherwise. One of the conditions for the validity of an agreement, as stated in Article 1320 of the Civil Code (KUHPperdata), is the competence of the parties involved in making an agreement.

Registration through the OSS-RBA system is carried out by business actors, which include both individual and non-individual entities. According to Article 6, paragraph (3) of Government Regulation Number 24 of 2018, a non-individual business actor refers to entities such as Limited Liability Companies (PT), State-Owned Enterprises (BUMN), Regional Public Companies, other legal entities owned by the state, public service

agencies, broadcasting institutions, business entities established by foundations, cooperatives, commanditaire vennootschap (CV), general partnerships (firma), and civil partnerships. During the process of PT legalization, the NPWP for the company is also issued. However, in practice, sometimes the NPWP does not appear due to system errors, resulting in a lack of integration between the data in the AHU Online system and the data in the local Tax Office system. What the business owner must do in this case is to promptly apply for an NPWP, either online or manually by visiting the Tax Office, needed for the PT to run its business operations.

The role of the notary in the establishment of a PT is not limited to creating the deed of establishment but also assisting the business owner in accessing the legalization of the business entity through the AHU Online system, which is integrated with the OSS-RBA system, in order to obtain the Business Identification Number (NIB), business license, and operational license. In carrying out this role, the notary benefits from the OSS-RBA system, but also encounters several obstacles, both technical and related to human resources.

Regarding these responsibilities, the notary has a broader scope of responsibility, not only in creating authentic deeds but also in helping to access OSS-RBA for business licensing purposes. In this case, the basis for processing business licenses through OSS-RBA is the notary's deed of establishment. If there is an error during the registration process, the deed cannot be used again. The notary's accountability in this context, based on the power of attorney from PT SNPP, is as follows.

3.2 Errors in Typing by a Notary and the Resolution of Typographical Mistakes in an Authentic Deed

Typographical errors in notarial deeds can occur due to simple mistakes in typing. Such errors are not intentional but are a result of the notary's negligence or lack of caution, causing the information in the deed to be incorrect compared to what was intended. Typographical mistakes in a notarial deed can be either substantive or non-substantive. A non-substantive typographical error means that the mistake does not result in a significant change in the meaning of the deed's content. Even if there is a slight difference in the meaning of a word, the context of the sentence remains clear and cannot be interpreted differently from the original intent. Examples include spelling errors, such as writing "lalai" (negligence) as "lalat" (fly) or "anggaran dasar" (articles of association) as "anggaran datar" (flat budget). On the other hand, a substantive typographical error leads to a significant change in the meaning or intent of the deed, making the content no longer reflect what the parties or the notary originally intended.

The changes are considered valid as long as they are initialed or confirmed by the parties, witnesses, and the notary. This is in accordance with Article 48 of the Notary's Office Law (UUJN), which states: "(1) The content of the deed is prohibited from being altered by: replacing it; adding to it; crossing it out; inserting words; deleting it; and/or overwriting it. (2) Changes to the content of the deed, as referred to in paragraph (1) subparagraphs a, b, c, and d, can be made and are valid if the changes are initialed or confirmed by the parties, witnesses, and the notary."

Article 48(1) of the UUJN clearly and explicitly prohibits changes to the content of a deed. However, Article 48(2) provides an exception allowing modifications to the deed's content, but these modifications must be initialed or validated by the parties, witnesses, and the notary. Importantly, any alterations to the beginning or end of the deed, which are the Notary's Declaration (Notaris Verklaring), are prohibited as they are essential

for ensuring legal certainty. Any changes to these parts would undermine the certainty of the notary's declaration.

These sections are the notary's responsibility and serve as part of the formal proof of the deed's authenticity. With this formal evidentiary power, an authentic deed proves that the notary has verified and witnessed the actions in the deed while performing their duties. Renvoi is not permissible in the beginning or end of the deed, as this would invalidate the notary's declaration, compromising the legal certainty of the deed. Responsibility, on the other hand, refers to the obligation to answer for a duty, including decisions, skills, abilities, and the competence to carry out duties in compliance with the law.

Sanctions serve as a coercive tool, not only as punishment but also to enforce compliance with regulations or agreements. A sanction is also defined as a coercive measure or punishment for non-compliance with an agreement. Sanctions are a form of legal power, primarily under public law, used by authorities as a response to non-compliance with administrative legal norms. Therefore, the elements of sanctions include: Being a tool of power, Being part of public law, Being enforced by authorities, and Serving as a response to non-compliance. Sanctions aim to correct the violator's behavior, ensuring they act in accordance with the law and maintaining the balance of legal norms.

The provision of Article 85 of the Notary Public Law (UUJN) reads as follows: "Violations of the provisions referred to in Articles 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 59, Article 58, and/or Article 63 may be subject to sanctions in the form of: a. oral warning; b. written warning; c. temporary dismissal; d. honorable dismissal; or e. dishonorable dismissal." There are two types of sanctions, namely:

a. Civil Sanctions

These sanctions include compensation for costs, damages, and interest, which will be incurred by the Notary due to claims from the parties if the deed in question only has the evidentiary power of a private deed or is rendered void by law. A Notary deed with perfect evidentiary power, when violating certain provisions, will lose its legal standing and become a private deed. If it is proven that the parties recognize a deed that violates the provisions stated in Article 84 of the Notary Public Law, the deed in question still holds perfect evidentiary power and binds the parties involved. Therefore, determining whether a Notary deed is downgraded to a private deed falls within the scope of assessing an item of evidence (Sasauw, 2015).

A Notary deed that has the evidentiary power of a private deed due to violating the provisions outlined in Article 84 of the UUJN must be proven through a civil lawsuit filed in a general court by the parties whose names appear in the deed and who have suffered losses as a result of the deed. In this case, the party filing the lawsuit against the Notary must prove the outward, formal, or material aspects violated by the Notary. The lawsuit will be accompanied by a claim for compensation for costs, damages, and interest. If the court rules and proves that the Notary deed has violated the outward, formal, or material aspects as outlined in Article 84 of the UUJN, and the parties can prove they have suffered losses as a result of the deed, the Notary may be held liable for compensating the costs, damages, and interest to the affected parties.

The lawsuit will be accompanied by a claim for compensation for costs, damages, and interest. If the court rules and proves that the Notary deed has violated the outward, formal, or material aspects as outlined in Article 84 of the UUJN, and the parties can prove they have suffered losses as a result of the deed, the Notary may be held liable for compensating the costs, damages, and interest to the affected parties. This type of

sanction is known as a Civil Sanction and is considered External, as the sanction is imposed in relation to other parties.

b. Administrative Sanctions

The instruments for law enforcement include supervision and the imposition of sanctions. Supervision serves as a preventive measure to enforce compliance, while the application of sanctions is a repressive measure to ensure compliance. In enforcing administrative sanctions against a Notary, the supervisory body, which is the Supervisory Council, plays a key role in taking preventive steps to enforce compliance, applying repressive sanctions, and ensuring that these sanctions are executed (PUTRO, 2021). If the MPD finds criminal elements in a report, it may inform the Regional Supervisory Council (MPW) and convene a hearing to investigate potential violations of the Notary's Code of Ethics or misconduct in carrying out their duties. If the MPD finds violations, it cannot impose repressive sanctions directly on the Notary but can report the findings to the MPW (Rizadi, 2023).

The MPW can take preventive steps by holding hearings to examine and make decisions on complaints submitted by the public through the MPW, summoning the Notary as the reported party for examination. The MPW also reviews and decides on the results of the MPD's investigation. The MPW can impose repressive sanctions, such as oral or written warnings, which are final, and can propose further sanctions to the Central Supervisory Council (MPP), including: Temporary dismissal for 3 to 6 months, or Dishonorable dismissal. Therefore, under Article 48 of the Notary Public Law, when a Notary reads a deed and finds any error in the form at the beginning or end of the deed, the immediate action that should be taken is: In the case of the establishment deed of PT. SNPP, where there was a writing error in the personal data of the parties, including the director of PT. SNPP, the Notary is authorized to make corrections to the deed. Article 51 of the Notary Public Law states: . However, if the error is found and noticed when reading the deed to the parties and before signing, it can be corrected by making changes or *renvoi*, provided the parties agree to the correction. The issue arises when the deed has already been signed by the parties, they have left the Notary's office, and a copy of the deed has already been issued, but later an error is discovered in the copy of the deed.

4. Conclusion

Notaries, in the management of business permits through the OSS-RBA system according to applicable regulations, do not have the authority to operate the OSS-RBA system, as it can be accessed by anyone wishing to register a business entity. However, the Notary's authority in filling out the business permit data electronically is an authority that can be obtained through a power of attorney granted by the business actor. The power of attorney granted by the business actor to the Notary clearly establishes a legal relationship, where the Notary acts on behalf of the business actor's legal interests, providing authority and responsibility, as well as creating rights and obligations between both parties. A Notary involved in the business licensing process through the OSS system can be held accountable based on the power of attorney agreement, which gives rise to rights and obligations for both the principal and the agent. The responsibilities that arise are civil liability and moral responsibility related to the Notary's Code of Ethics.

Second, in the case of a typing error in the deed minute, it can be administratively corrected by making changes, such as replacing, adding, crossing out, or inserting words. These changes should only be made to the content of the deed and not at the beginning or end of the deed, and must be accompanied by initials or another form of validation by the parties, witnesses, and as a form of the Notary's authenticity. The Notary's responsi-

bility for a typing error in the deed minute, after the copy has been issued, is to directly correct the draft deed by reprinting it if the parties are still present and there is office equipment available to support it. However, if the parties are no longer present before the Notary, the Notary must contact the parties again to make corrections to the deed (not changes).

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