Malpractice Dispute Resolution Conducted By Notary (Supreme Court Ruling Study Number: 2377 K/Pdt/2016)
Indra Kurniawan
Faculty of Law, University of Jenderal Soedirman

Abstract
A notary is a public official who is authorized by the state to make an authentic deed, the authority of this notary has been regulated in the Act of Notary (UUJN) and the Code of Ethics for Notary. Notary in making authentic deeds, solving challenges that lead to malpractice. The data used are secondary data and primary data as a complement to secondary data. The method used in this study is a method that discusses normative juridical. The research results obtained are 2 (two) notaries acceptable to malpractice, namely forms of denial or deviation and ability of the duties and responsibilities of the notary, either because of problems or negligence that can be justified. Accountability of the notary in the case of malpractice actions can be carried out on the basis of a moral law that will be borne by the notary if they carry out malpractice. The dispute resolution process carried out by a notary can be done through the Notary Supervisory Board, but cannot discuss the agreements that can be made in the Court.

Keywords: Notary Liability, Malpractice, Dispute Resolution

Introduction
The State of Indonesia is one of the countries based on the law (rechtsstaat) following the Constitution 1945 Article 1 number 3, (The State of Indonesia is the state of law) in the sense that everything in the State of Indonesia in any form is already stipulated in the applicable laws or regulations. The principle of the state under the law is to ensure the certainty, order, and protection of laws that are ingrained in truth and justice. The demand for legal protection in the development of public life is reflected in the law of proof, the absence of evidence tools can determine one's rights and obligations as the subject of law in society.
Article 1866 of the Civil Code, known as evidence, consists of writing evidence, evidence with witnesses, guesses, confessions, and oaths. Regarding the writing evidence included in it is an authentic deed. Article 1868 of the Civil Code referred to by the authentic deed is a deed that is in the form determined by law, created by or before the public servants who are in charge of it in the place where the deed is made. Based on this understanding, there are several elements: First, that the deed is made and inaugurated (verleden) in a legal form. Second, that the deed was made by or before a public official. Third, that the deed was made by or before the authorized official to make it in the place where the deed was made. Public officials intended in the article can be notaries, judges, bailiffs at a court, civil records officers, and auction officials. In the event of a notary deed, the right to make an authentic deed is a notary, since the notary has been appointed as the only public official who has the right to make all deed authentic, except for other governing laws and regulations.

Notaries are public officials appointed by the government to assist the general public in making existing or arising agreements in the community. The need for these written agreements to be made before a notary is to ensure legal certainty for the parties to the agreement. Law No. 2/2014 on Amendment to Law No. 30/2004 on Notary Department (hereby called UUJN), in Article 1 number 1 states that a notary is a general official authorized to make an authentic deed and has other authority, as referred to in this law or under other laws. Simply put, the notary is a public official authorized to make an authentic deed to the extent that the creation of a particular authentic deed is not reserved for other public officials.

The notary’s job is to create the evidence tools desired by the parties for a particular legal action, and the evidence is in the civil law state, and that the notary makes the deed because there is a request from the parties facing, without any request from the parties, the notary will not make any deed, and the notary makes the deed in question-based on the evidence tool or the information or statement of the parties expressed or explained or shown to or before the notary, and the notary frames it outwardly, formal and material in the form of a notary deed, while still based on the rule of law or ordinances or procedures of making deed and the rule of law relating to the relevant legal action stipulated in the deed. Authentic deed as a proof tool has an important role in every legal relationship in people’s lives. The need for written proof in the form of authentic deed is increasing, in line with the growing demand for legal certainty in various economic and social relationships. The authentic deed determines rights and
obligations, guarantees legal certainty and at the same time is expected to avoid disputes.

The development of the modernization era in economic activities and other businesses in society, unwittingly notary in providing services is required to have the professional ability in carrying out the duties of his office to assist the people who need his services. The more professional the notary's ability to carry out its duties, the better the legal services that will be received by the community. A notary in carrying out his position has the high professional ability, but if in carrying out his position is not based on moral integrity, the nobility of dignity, and professional ethics, then the notary can harm the interests of the community and will also damage the good name of the Indonesian Notary Association (INI) as his professional organization.

It is unfortunate that in the future the legal product made by the notary of its contents is in question, doubtful of its veracity, considered contrary to the law, and/or deemed to be detrimental to its client, even if it is due to its inadvertentness, lack of mastery in carrying out its office duties and/or contrary to the notary code of conduct. Things like this can lead to malpractice committed by notaries. Malpractice is an act committed by a notary in the form of denial or deviation or lack of ability to perform notary duties and responsibilities, either due to errors or omissions that can be accounted for to them to perform their professional obligations based on the trust given to them. The notary is responsible for all deed stipulated by him, therefore the notary is required to always be thorough and careful in carrying out the duties of his office, as stated in Article 65 of UUJN: Notary, notary replacement, and the temporary official of the notary is responsible for any deed he makes even though the notary protocol has been submitted or transferred to the notary protocol keeper.

A notary who commits errors or omissions in making a deed can then be held accountable for it. As a result of errors or omissions made by the notary. For example, malpractice carried out by notaries, can be seen in cases with Verdict Number 28/PDT. G/2015/PN. BGR, among the plaintiffs namely Mefrizar Muchlis and defendant Safrudin Ali Achmed has done the binding of trade stipulated in the deed PPJB No. 32 dated May 23, 2013, in front of the defendant I as a notary, Nitra Reza S.H., M.Kn, with the area of office in Bogor city. The contents of the deed of binding of the sale, that the defendant will buy the plaintiff's land and buildings located on Jl. Kenanga No. 16, RT.003, RW. 008, Kebon Kelapa, Central Bogor District, Bogor City of West Java, area 659 m2 (six hundred and fifty-nine square meters), amounting to Rp.960.000.000,- (nine hundred and sixty million rupiah). The plaintiff and the defendant have agreed to make a trade on the land.
by transfer payment after the signing of the PPJB deed, but the notary Nitra Reza S.H., M.Kn., misrepresented or has been negligent, stating that the plaintiff and the defendant have made the payment before him, until the deed of PPJB No. 32 dated May 23, 2013. Article 1 of the PPJB act includes a clause:

(1) The sale and purchase of the land and all that is contained on these lands, approved at a price of Rp. 960,000,000,- (Nine hundred and sixty million rupiah);

(2) The amount of money at the time of signing of this deed is paid in full by the Second Party to the First Party amounting to Rp. 960,000,000,- (Nine hundred and sixty million rupiah), and for receipt of such money this deed applies also as its receipt or valid receipt.

As a result of the PPJB, the plaintiff filed a lawsuit with the Bogor District Court with the case number 28/PDT. G/2015/PN. BGR with the matter of canceling the Binding Act of Sale and Purchase No. 32 dated May 23, 2013 and demanding the defendant, Nitra Reza, SH. M.Kn., to submit SHM No. 110/Kebon Kelapa on behalf of Mefrizal Muchlis as described in the Letter of Measure dated May 03, 1996 No. 109/1996 to the Plaintiff. The case continues to cassation level, with the number 2377 K/Pdt/2016.

From that case, notaries can be involved in problems between the parties, in this case related to the binding agreement of trade. Notaries have the authority to create PPJB based on the agreement of the parties present before the notary. Also involved a notary in the case because in exercising its authority in making an authentic deed contrary to the prevailing law, the notary makes an authentic deed that is not based on the facts. In fact, there are still notaries who participated as defendants regarding the cancellation of the deed due to notary negligence in making the deed that harmed the seller, due to negligence acting on his duties and authority, as happened in the notary Nitra Reza in Bogor city.

Based on the description of the problem, the author felt the need for malpractice that occurred among the notary profession to be examined and discussed into the thesis with the title: "Resolution of Malpractice Disputes Conducted By Notaries (Study of Supreme Court Decision Number: 2377 K/Pdt/2016)".

**Research Problems**

Based on the issues outlined above, it is interesting for the authors to carry out this research, so the legal issues raised in this study are:

1. What are the malpractice elements of the notarization aspect?
2. What is the notary accountability for malpractice in the creation of deed (Study of Supreme Court Decision No. 2377 K/Pdt/2016)?
3. How is the resolution of malpractice disputes conducted by notaries (Supreme Court Decision Study Number: 2377 K/Pdt/2016)?

Research Method

Penelitian ini menggunakan jenis penelitian yuridis normatif. Penelitian hukum yuridis normatif atau kepustakaan tersebut mencangkup 3 (tiga) pendekatan yang diterapkan dalam penelitian ini, antara lain: Pendekatan perundang-undangan (statute approach), Pendekatan kasus (case approach), dan Pendekatan analitis (analytical approach). Data yang digunakan dalam penelitian ini adalah data sekunder dan data primer sebagai pelengkap dari data sekunder. Sedangkan teknik analisa data yang digunakan adalah normatif kualitatif.
Discussion

Research Results

Mefrizar Muchlis / Seller / Plaintiff

Safrudin Ali Achmed / Buyer / Defendant

Tanah di Jl. Kenanga No. 16, RT.003, RW. 008, Bogor.

Notaris Nitra Reza, S.H., MKn. / Defendants

PPJB No. 32

Malpractice?

Putusan Pengadilan Negeri Bogor Nomor 28/PDT.G/2015/PN.BGR:
- PPJB Number 32 in Article 1 lists a clause that has been made payment and ppjb deed is made as proof of payment or receipt, but in reality there has been no payment at all. For such negligence, the Panel of Judges in its warning of its decision to rescind the PPJB's deed.

Putusan Pengadilan Tinggi Bandung Nomor 501/Pdt/2015/PT.Bdg:
- Receive an appeal from the Comparison, originally Also Defendant;
- Corroborating the decision of bogor district court Number 28/Pdt.G/2015/PN. Bgr.

Putusan Mahkamah Agung Nomor 2377 K/Pdt/2016:
- Contrary to the Decision of the District Court and the High Court, the Supreme Court's Panel of Judges in its consideration that judex facti has failed to meet the conditions required by the Laws and Plaintiffs present witnesses who are legally not allowed, namely the wife and driver.
- Supreme Court Judges in warning of the verdict: overturning the decision of the Bandung High Court No. 501/PDT/2015/PT. BDG that strengthens the Decision of Bogor District Court No. 28/Pdt.G/2015/ PN.Bgr.
- Upon the verdict, PPJB is declared valid, and there is no malpractice.
Malpractice Dispute Resolution Conducted...
Indra Kurniawan

Analysis

1. Malpractice elements of the notarization aspect

The use of the term malpractice is closely related to medicine, but now it has spread in various disciplines including in the field of notarization. The term malpractice in medicine according to D. Veronica Komalawati is, in fact, an error in the running of the profession arising as a result of the obligations that doctors must perform (Komalawati, 1989). Hermien Hadiati Koeswadij, citing the opinion of John D. Blum, said that medical malpractice is a form of professional negligence that patients can be compensated in the event of injuries or defects directly caused by the doctor in carrying out measurable professional actions. The main handle used to establish malpractice is quite clear that there is a professional error made by a doctor at the time of treatment and there are others who are harmed by the doctor’s actions (Heryanto, 2010).

Malpractice can also occur in the profession of advocate. Malpractice is the act of an advocate in the relationship with the provision of legal services to his client, where the legal services are provided under operational standards or given in violation of the "fiduciary" obligations of the advocate or performed deliberately or can be aligned with an omission, or given in a manner contrary to applicable law, or default to the contract of providing legal services because between the advocate and his client have a legal relationship with the provision of legal services (attorney-client relationship), or the advocate violates the obligation to provide loyalty (duty of loyalty) and the duty to maintain confidentiality. So it is an unlawful act against the provision of such legal services, resulting in the onset of damages for the aggrieved client is entitled to compensation (Fuady, 2005).

In addition to medicine and advocates, notaries can also be subject to malpractice. The term notary malpractice is not very well known in notarization. Malpractice committed by a notary can be moral but legal, i.e. not breaking the law but violating moral norms and this is referred to as violating the code of conduct, but it can also violate moral norms and violate legal norms such as forgery of letters or making false letters, as well as malpractice that is done not in violation of moral norms but violates legal norms such as the creation of deeds outside the jurisdiction of its workplace (Tedjosaputro, 1991).

Malpractice according to Coughlin, former President of the New York State Bar Association, in his book Dictionary of Law, malpractice is formulated as : 

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“professional misconduct on the part of a professional person, such as a physician, engineer, lawyer, accountant, dentist, or veterinarian. Malpractice may be the result of ignorance, neglect, or lack of skill or fidelity in the performance of professional duties, intentional wrongdoing, or legal or unethical practice” (Soekanto, 1987).

In the book The Dentist and The Law, written by Charles Wendell Carnahan, wrote:

“what is malpractice? In a general sense malpractice is “bad” practice, a failure to comply with the standards set by the profession. From the standpoint of a patient who was sustained injuries, it may cover the range on incidents from diagnosis through operation and after-treatment” (Mariyanti, 1988).

According to John M. Echols and Hassan Shadily in the English Dictionary of Indonesia, malpractice is interpreted as a misrepresentation. From that sense, malpractice can be interpreted as a form of denial or deviation or lack of ability to carry out professional obligations or based on trust. So it can be concluded that the elements of notary malpractice are:

1. Forms of denial or deviation.
2. Lack of ability of notary duties and responsibilities, whether due to errors or negligence that can be accounted for to them to carry out professional obligations or based on trust (Tedjosaputro, 1991).

2. Notary accountability for malpractice in the making of deed (Study of Supreme Court Ruling Number: 2377 K/PDT/2016)

The existence of the notary is not for himself, but rather to meet the needs of the community (PPINI, 2008). One form of state service to its people is that the state allows its people to obtain evidence or legal documents related to civil law, to be given to a public office held by a notary and minute on the deed becomes the property of the state that must be kept until an unspecified time limit. As a form of exercising the power of the state then accepted by the notary in the position of office, the notary wears the symbol of the state, namely the garuda bird (Adjie, 2009). Notary in exercising some of the power of the state in the field of civil law to serve the interests of the people who need proof of legal documents in the form of authentic deed recognized by the state as perfect evidence. The authenticity of the notarial deed is not on its paper, but the deed in question is made before a notary as a public official with all its authority or in other words, the deed made by the notary has an authentic nature, not because the law stipulates in such a way, but because the deed is made by or before a public official, as referred to in Article 1868 of the Criminal Court (Adjie, 2009).
Notaries in carrying out their professional duties in addition to having to be based on the law, but must also uphold the moral values of the profession. As a public official, a notary must uphold the principle of prudence because the accountability of a notary to the deed he makes is for life. Notary in carrying out his profession following the prevailing regulations will certainly not encounter legal problems, but if the notary who runs his profession by not heeding the regulations, of course, will face the legal problems that arise.

Notaries are officials who according to Kranenburg and Vegtig, the accountability of officials according to them there are two theories that plague, namely:

1. *Fautes personales* theory is a theory that states that the loss of the third party is charged to the office as a result of his actions incurring losses. In this theory, the burden of responsibility is directed at the man as a person.
2. *Fautes de service* theory is a theory that says that losses to third parties are directed or charged to the agency or body from which the office originated. The explanation in this theory of responsibility is imposed on his office. Its implementation in determining a responsibility must look at how much wrongdoing the officials have made. Because big and small a mistake also impacts the accountability that must be borne (*Ridwan, 2006*).

Notaries as public officials authorized to make authentic deed may be held liable for their actions in connection with his work in making the deed. The aspect of notary accountability arises because of a mistake (*schuld*) made in carrying out a duty of office and the error causes a loss for others who ask for notary services. So that the unlawful conduct (*wederrechtelijk*) of the notary can be held accountable from a data, administrative and criminal law point of view.

Article 84 and Article 85 of UUJN, notaries are responsible for the parties concerned:

a. **In that case, where it is expressly specified in the UUJN;**

b. **If a deed, due to a defect in form, is only a deed made under the hand;**

c. **In all things, according to Sections 1365, 1366, and 1367 of the Civil War, there is an obligation to pay damages (*Tedjosaputro, 1991*).**
As far as the matters concerned are referred to in Article 84 and Article 85 of UUJN, before the notary in question can be punished to pay compensation, interest, and costs must first be proven the following elements:

a. There are losses;

b. There is a causal relationship between the losses suffered and the offense;

c. That the violation or negligence was caused by an error that can be accounted for to the notary concerned.

And if you are in a way that you do not know what is in your way, then surely it is not for you to be determined. The hard thing to prove is the other two elements, namely those referred to in sub b and c above. The loss suffered must be as a result of a notary act or omission. Another condition is that the act or omission is caused by an error that can be accounted for to the notary in a broad sense, which includes the element of willfulness and error (*dolus* and *culpa*).

Intentional (*dolus*) does not cause many difficulties. A notary who is completely deliberate, pre-planned, meaning insyaf, and knowingly harming his client, is something that can very rarely happen. As long as the culpa, in this case, should be embraced by the establishment, that it is not the subjective state of the notary concerned that determines to what far the responsibility is, but should be based on an objective consideration. In this case, it must be stated, is a notary normal and good, should not be able to know the consequences that are not claimed? If the answer is so, then in this case there is an error, otherwise the notary in question cannot be blamed (*Tedjosaputro, 1991*).

Notary authority is stipulated in Article 15 of UUJN, one of these authorities is to make a deed of agreement binding on trade (hereby referred to as PPJB). PPJB is an aid agreement that serves as a free-form preliminary agreement (*Budiono, 2004*). Although PPJB is free form, notaries are still required to always be thorough and careful in making PPJB. Except or lack of prudence from notaries can make the deed that he makes problematic, the notary can participate in cases faced by his clients. One of them is in the creation of deed PPJB number 32 dated May 23, 2013, made by Nitra Reza S.H., M.Kn. notary in Bogor city. The PPJB Act was made to purchase land and buildings from Mafrizar Muchlis/ Plaintiff, located at Jl. Kenangan No. 16,
If the PPJB is associated with notary malpractice elements, namely:

1. Forms of denial or deviation.
2. Lack of ability of notary duties and responsibilities, either due to errors or omissions that can be accounted for to them to carry out professional obligations or based on trust (Tedjosaputro, 1991).

The PPJB clause contains forms of denial or irregularities, in which the Plaintiff, Mefrizar Muchlis, and Defendant Safrudin Ali Achmed, have agreed to do the PPJB, but there has been no payment process. While the notary Nitra Reza S.H., M.Kn. considers that they have agreed and have made a payment so that in the deed PPJB is listed this deed clause applies also as a valid receipt or receipt. Notary Nitra Reza S.H., M.Kn. made the PPJB deed as a valid payment receipt, even though notary Nitra Reza S.H., M.Kn. did not witness directly the handover of payment money by Safrudin Ali Achmed when the deed was signed. The payment should be said to be paid in full or in part, there must be documents or proof of payment. There is minimal evidence that there is a payment transaction in full or in part. So that the negligence committed by notary Nitra Reza, S.H., M.kn. in making the PPJB deed can be held accountable.

In connection with the above issues, if associated with material liability according to Abdul Ghofur Anshori, notary Nitra Reza, S.H., M.Kn. may be held liable for (Anshori, 2009):

1. Civil notary responsibility for material truth to the deed he made.

According to Ima Erlie Yuana, UUJN’s explanation shows that notaries are solely responsible for the formalities of an authentic deed and not to the authentic deed material (Yuana, 2010). The explanation states that the authentic deed contains only formal truths following what the parties state to the notary. Notaries have the authority to pour what is included in the notarial deed is true and following the agreement and wishes of the parties by reading it before the parties so that it becomes true evidence of the contents of the authentic deed, as well as providing relevant information for the parties who signed the deed, thus the parties can determine freely to approve or
disapprove of the contents of the notarial deed to be signed. The UUJN indicates that the notary is only responsible for the formality of an authentic deed and not on the content of the deed material, but the notary can be held accountable for the material truth of a deed if the legal advice it is given turns out to be false. Based on this explanation, notary Nitra Reza, S.H., M.Kn. may be subject to Article 1366 of the Penal Order i.e. everyone is responsible, not only for the losses caused by the actions but also for the losses caused by negligence or lack of care.

2. Notary responsibility under the Notary Department Regulation on material truth in the deed he made

Notary responsibility is included in Article 65 of UUJN, which states that the notary is responsible for any deed he makes, even though the notary protocol has been submitted or transferred to the notary protocol keeper. It means that every deed made by a notary, the notary is responsible for the deed he made, but in UUJN more governs to the terms of formal that must be carried out by the notary. The terms of formal liability of the notary are listed in article 84 of UUJN. Then can't notaries be subject to material responsibility from UUJN? According to Ima Erlie Yuana, material responsibility for the deed made before a notary must be asserted that with notary authority in the creation of an authentic deed does not mean that the notary can freely make an authentic deed without the parties requesting to be made a deed (Yuana, 2010). Based on the explanation, notary Nitra Reza, S.H., M.Kn does not violate the formal terms specified by UUJN in the creation of PPJB deed No. 32, but notary Nitra Reza, S.H., M.Kn. may be subject to material liability under Article 85 UUJN, i.e. violation of the provisions as referred to Article 16 paragraph (i) letter a, act mandate, honest, careful, independent, impartial, and safeguard the interests of the relevant parties in the legal action. For such acts notary Nitra Reza, S.H., M.Kn may be subject to sanctions in the form of verbal reprimands, written reprimands, temporary dismissals, respectful dismissals, or disrespectful dismissals.

3. Notary responsibilities in carrying out their duties based on the notary code of conduct.

The relationship between the notary code of conduct and UUJN gives meaning to the notary profession itself. UUJN and the notary code of conduct require that the notary in carrying out its duties, in addition to having to
submit to UUJN must also adhere to the professional code of conduct and must be responsible to the communities it serves, professional organizations (Indonesian Notary Association or INI) as well as to the country. Notaries in carrying out their duties and positions must be responsible, meaning:

a. Notaries are required to make deeds properly and correctly. It means that the deed that is made fulfills the will of the law and the request of the interested party because of its position.

b. Notaries are required to produce quality deeds. It means that the deed he made is in accordance with the rule of law and the will of the interested parties in the true sense, not to make up. The notary explained to the interested parties the correctness of the contents and procedures of the deed that he made.

c. It has a positive impact, meaning anyone will recognize that the notary deed has the power of perfect evidence (Ashori, 2009).

Notary Nitra Reza, S.H., M.Kn. may be held accountable for the code of conduct for the PPJB deed that has been made. The responsibility of the notary is to do the deed properly and properly and to produce a quality deed. The negligence of notary Nitra Reza, S.H., M.Kn. in making the PPJB deed incompatible with the facts may be held liable, be it reprimand sanctions, warnings, schmoozing (temporary termination) of the membership of the association, onsetting (respectful dismissal) of the membership of the association, to the disrespectful dismissal of the membership of the association. The lifting of such sanctions to members who violate the code of conduct is adjusted to the quantity and quality of violations committed by such members.

4. Criminal notary responsibility for material truth to the deed he made.

Notaries in carrying out their duties do not escape mistakes, both intentional and unintentional. The notary’s mistakes allow the notary to deal with legal liability both civilly, administratively, and criminally. Criminal provisions are not regulated in UUJN but criminal notary responsibility may be imposed if a notary commits a criminal act. Related to the concept of malpractice, which malpractice is a form of negligence without the intentionality of the perpetrator then here notary Nitra Reza, S.H., M.Kn. cannot be criminally charged.
3. Malpractice dispute resolution conducted by notaries (Supreme Court Decision Study Number: 2377 K/Pdt/2016)

The role of a notary in providing legal counseling is carried out to assist in the creation of an authentic deed and this is a unit that cannot be separated from each other. This is following the provisions stipulated in article 15 paragraph 2 letter e of Law No. 2 of 2014 on The Change of Law No. 30 of 2004 on notary departments. In addition to the forces mentioned above, in Article 3 letter a Formula of Commission D of the Code of Conduct of the Indonesian Notary Association period 1990-1993 that the member (notary) shall provide legal counseling to the client, to the extent possible so that the client can arrest and understand the counseling, even by providing counseling the person is unable to make a deed or undo being a client of the member concerned. Notaries are also authorized to provide legal counseling in connection with the creation of the deed (Sungguh, 2004). The legal counseling followed by the creation of the deed is an inseparable entity. It is only in providing legal counseling, the notary must explain the actual legal circumstances following the prevailing laws and regulations, explaining the rights and obligations of the parties to achieve high legal awareness in society, honest, impartial, and with a sense of responsibility. Notary in providing legal counseling, he must understand well the problem questioned by the client to him, so that the notary does not provide a false or inappropriate explanation even in violation of the prevailing provisions. Besides, in providing counseling the law notary should be able to assess in advance what is required by the parties who come to it, give advice following the law, and seek the appropriate legal forms and desired by the parties.

Notaries are required to always be thorough and careful in carrying out their duties, the inaccuracy of the notary in carrying out the duties of his office in providing legal counseling or deed making may result in a problem for the notary. Notaries may participate in the dispute, even if the deed made by the notary is a deed made based on the information of the parties. According to Mudofir Hadi, in his preview, a notary may make mistakes in carrying out his duties. As for the mistakes that may occur, namely:

a. Typos on notary copies, in which case the error can be corrected by creating a new copy that is the same as the original and only the same copy as the new original have the same power as the original deed;
b. The misformation of the notarial deed, in this case where it should be made news of the meeting event but by the notary is made as a statement of the decision of the meeting;

c. The error of the contents of the notarial deed, in this case concerning the information of the parties facing the notary, where at the time of the creation of the deed is considered correct but it turns out then is not true (Hadi, 1991).

The offenses that occur in the deeds made by the notary will be corrected by the judge at the time the notary deed is submitted to the court as a means of evidence. The authority of the judge to declare a notary deed null and void can be revoked or the notary deed is declared to have no legal force. Against violations committed by notaries causing a deed to only have the power of proof as a deed under hand or deed to be null and void, then the injured party may demand reimbursement of costs, damages, and interest on the notary. In the event that a notary deed is overturned by a judge's ruling in court, then if it incurs harm to the interested parties, the notary may be required to provide compensation, as long as it occurs due to a notary error, but in the event of the annulment of the notary deed by the court does not harm the interested parties then the notary cannot be required to provide compensation despite the loss of good name (Santoso, 2009). Generally, a notary may be required to pay damages in the case of (1) Notary misconduct; (2) Any loss suffered; (3) Between losses suffered by negligence or notary violations there is a causality relationship (Santoso, 2009).

The errors made by the notary, the dispute resolution process is carried out by the Notary Supervisory Tribunal. The role of the Notary Supervisory Panel is to carry out the supervision of the notary so that in carrying out its duties of the office does not deviate from its authority and does not violate the prevailing laws and regulations, in addition to conducting supervision, examination, and imposing sanctions on notaries. Article 68 of the Notary Department Law states that the Board of Trustees as referred to in Article 67 paragraph (2) consists of:

1. Regional Supervisory Council (MPD);
2. Regional Supervisory Panel (MPW);
3. Central Supervisory Assembly (MPP).
The dispute resolution process allegedly conducted by a notary is generally taken to the Regional Supervisory Assembly or commonly referred to as a non-litigation settlement. The non-litigation settlement process is a dispute resolution process conducted outside the courts, stipulated in Law No. 30 of 1999 On Arbitration And Alternative Dispute Resolution. There are five ways of resolving disputes under this law: consultation, negotiation, mediation, conciliation, and expert assessment. The Regional Supervisory Panel in settlements arising between the notary and his client or a third party, generally using the means of negotiation. According to Susanti Adi Nugroho, negotiation is a bargaining process to reach an agreement with the other party through an interaction process, dynamic communication to get a resolution, or a way out of the problems that are being faced by both sides (Nugroho, 2009). This negotiation process aims so that notaries and disputed parties can find a solution to an act allegedly committed by a notary that results in losses to its parties. This does not cover the possibility for the aggrieved party to conduct the dispute resolution process through litigation, as this is the freedom of the injured party for the actions of the notary.

The settlement process by way of litigation is in the district court ruling number 28/PDT. G/2015/PN. BGR, among the plaintiffs namely Mefrizar Muchlis and defendant Safrudin Ali Achmed has done the binding of trade stipulated in PPJB deed No. 32 dated May 23, 2013, in front of the defendant I as a notary, Nitra Reza S.H., M.Kn. This problem arises because the notary Nitra Reza, S.H., M.Kn. in PPJB No. 32 states the clause that "The sale and purchase of the land and all those buildings, approved for Rp.960,000,000,- (nine hundred and sixty million rupiah); The amount of money at the time of signing of this deed is paid entirely by the Second party to the first party amounting to Rp. 960,000,000,- (nine hundred and sixty million rupiah) and for the receipt of such money the deed applies also as a receipt or a valid receipt". This clause is the basis that notary Nitra Reza, S.H., M.Kn. has been negligent in making the PPJB deed which is detrimental to the Plaintiff. In fact, at the time of the signing of the PPJB deed there is no payment process made by the Defendant, but according to notary Nitra Reza, S.H., M.Kn. there has been a payment process so that the clause is made.

The clause that this PPJB as proof of payment receipt can be proof that notary Nitra Reza, S.H., M.Kn. has been negligent in the making of his deed, how there may not have been a payment processor but the PPJB deed becomes
a receipt or proof of payment. There is an omission in the process of making PPJB No. 32, so it can be said that the deed is a juridical defect in its form. According to Article 1869 of the Civil War governing a deed that cannot be treated as an authentic deed, either because of the inauthentic or intensity of the relevant public official or because of defects in its form, has the power as a handwritten letter when signed by the parties. If connected to the article, PPJB No. 32 has been degraded so that it only has power as a handwritten and cannot be treated as an authentic deed.

Also Defendant, notary Nitra Reza, S.H., M.Kn. stated in his conclusion that he as a notary only records what plaintiffs and defendants want and there is no obligation of defendants to investigate the truth. According to notary Tajudin Nasution, it is true that the duty of a notary is to formulate into the deed what is required by the interested parties. Often in practice, the parties at the time of entry into a binding agreement as if the payment had been made, even though the payment will only be carried out after the completion of the signing of the agreement due to security reasons at the time of the transaction and for the efficiency of the time or other reasons, but the duty of a notary shall be observant and thorough in pouring the agreement into the deed of an agreement by not only following the will of the parties who make the agreement but also seeing or relying on the actual circumstances or supported with other evidence to avoid the absence of parties who do not have good faith and the onset of legal problems in the future.

The case continued until cassation in the Supreme Court, previously at the appeal level in the Bandung High Court with the number 501/Pdt/2015/PT.Bdg., the panel of judges dismissed the case with the warning of a ruling strengthening the ruling of Bogor District Court No. 28/PDT. G/2015/PN. Bgr. At the level of cassation in the Supreme Court with Number: 2377 K/Pdt/2016, the panel of judges argued otherly by rejecting the plaintiff's lawsuit entirely. A cassation is an act of the supreme court as the supreme watchdog of other court rulings. According to Prof. Dr. Supomo, S.H., cassation is the action of the Supreme Court to confirm and correct the law, if the law is challenged by the judges' rulings at the highest level (Sutantio, 2009). In simple terms, the examination of cassation only covers all judges' verdicts concerning the law (judex juris), so it is not re-examined regarding the sitting of the case until the examination of the level of cassation should not be considered a third-degree examination (judex factie). Judex factie is a judicial
system in which the panel of judges acts as the determinant of which facts are true. Besides, judex factie is more inclined to the authority of judges in determining a legal fact in a trial that will be considered in sentencing a verdict (Saleh, 1976). The understanding of judex juris is that the judge at the next level (the Supreme Court at the Court of Cassation level) examines the law of a case and applies the law to the facts of the case. Thus, the decision of judex juris is a verdict issued by the Supreme Court, which is the result of an examination related to the application of the law of judex facti (Saleh, 1976).

Article 30 paragraph (1) of Law No. 5/2004 On Changes to Law No. 14/1985 of the Supreme Court, makes clear that the Supreme Court in cassation overturns the ruling or determination of the courts of all judicial environments because:

a. Not authorized or exceeding the limits of authority;

b. Misapply or violate applicable laws;

c. Failure to meet the conditions required by the legislation that threatens such negligence with the void of the relevant award.

The Supreme Court grants the application for cassation under Article 30 paragraph (1) letter a, i.e. because the District Court or the High Court is not authorized or exceeds its authority limits, then the Supreme Court will submit the case to the Court authorized to examine and dismiss the case. In contrast, if the Supreme Court submits an application for cassation under Article 30 paragraph (1) letter b and letter c, i.e. because the District Court or High Court has misapplied or violated the applicable law or has neglected to meet the conditions required by the legislation that threatens that omission with the void of the relevant ruling, then the Supreme Court will decide for itself the case requested by the cassation (Sutantio, 2009).

Based on Article 30 paragraph (i) which is the basis that the Supreme Court granted the application for cassation from Cassation Applicant I and Cassation Applicant II, and overturned the Decision of Bandung High Court number 501/PDT/2015/PT. BDG that strengthens the Decision of Bogor District Court No. 28/Pdt.G/2015/PN.Bgr. The verdict on this level of cassation is contrary to what is in the District Court and at the level of the High Court. According to the Supreme Court’s Panel of Judges, judex facti Level of Appeal stipulates that there is nothing new to consider by judex facti Level of Appeal, less based on the correct reasons according to the law. Thus based on the fact
that the verdict of *judex facti* in the Bandung High Court No. 501/Pdt/2015/PT.Bdg which only states to take over the legal consideration of the Panel of Judges at the first level without giving a clear reason is to be invalid and must be overturned because *judex facti* has neglected to meet the requirements required by the Laws and Regulations that threaten the omission with the void of the verdict in question. A verdict other than having to contain the reason and basis of the verdict must also contain certain articles of legislation in question or the unwritten law that is the basis for adjudicating, this provision is stipulated in Article 50 paragraph (1) of Law No. 48 of 2009 on the Power of Justice. The contents of Article 184 of the HIR state that a judge's ruling must contain:

a. A brief but clear description of the contents of the lawsuit and answers.
b. The reasons are used as the basis of the judge's ruling.
c. The judge's decision on the subject matter and about the cost of the case.
d. A description of whether the parties to the litigation were present at the time of the decision was handed down.
e. If the decision is based on a statute, it must be mentioned.
f. Sign judges and clerks.

The Supreme Court’s Panel of Judges in its legal considerations stated that the Plaintiff's Original Cassation Request presents witnesses who are legally not allowed, namely the wife and driver of the Requested Cassation. Based on Article 1910 of the Civil Code, that should not be heard as a witness, namely: blood families and families according to the straight lineage of either party, wife, or husband of one party, even though they are divorced. As for the driver, due to the employment relationship and getting a salary from the Respondent of Cassation, then this witness should also not be sworn in according to the law. Until the wife and driver of the Requested Cassation should not be used as witnesses.

Seeing from PPJB No. 32 created by notary Nitra Reza, S.H., M.Kn. actually in the process of making it has been malpractice. Malpractice is the implementation of the duties of notary departments that do not comply with the prevailing laws and regulations, can concern about the formality of the deed that has been determined by UUJN, or in the process of making the deed
incompatible with UUJN. PPJB created by notary Nitra Reza, S.H., M.Kn. if it is associated with the concept of malpractice, then the formality of the PPJB deed made is correct, but if looking from the process of making the deed, the PPJB is not following the facts that existed at the time of the deed creation process. Witnesses who participated in the creation of the deed stated that no payment process was made by the Defendant to the Plaintiff at the signing of the PPJB deed, but by the notary still made PPJB and even contained a clause that the PPJB as a receipt or proof of payment. There is a Supreme Court Ruling that overturns the Bandung High Court Decision No. 501/PDT/2015/PT. BDG that strengthens the Decision of Bogor District Court No. 28/Pdt.G/2015/PN.Bgr. means that the PPJB Act No. 32 is declared valid and there is no malpractice, but this ruling does not reflect justice. The unfairness is in Mefrizar Muchlis as Plaintiff, because there is no payment process for the PPJB, and generally in PPJB there is a clause related to the fine if the buyer is late in the payment process. Related to the problem, in this case, is that the Defendant has left and is not known to be there for 2 (two) years since the signing of the PPJB Act, so the Defendant does not pay his obligation to pay the repayment money or fine to the Plaintiff, in other words, that defendant can be said to default. Based on Article 1243 of the Criminal War, namely reimbursement of costs, losses and interest due to the ineligible of an alliance is only beginning to be required, if the person is in owed, after being declared to be negligent in fulfilling his or her alliance, continues to neglect it, or if something to be given or made, can only be given or made within the grace period he has exceeded. This means that Defendants for their negligence in fulfilling the alliance may incur reimbursement, loss, and interest. Other consequences of the PPJB are declared valid, namely the Certificate of Property Rights on behalf of the Plaintiff back to the notary, and the Plaintiff continues to conduct the process of binding the sale and sale to the Defendant.

Plaintiffs may file another legal action, namely Review. The request civil is an attempt to fight the court’s ruling in both the District Court, the High Court, and the Supreme Court which has permanent legal powers (inkracht van gewijsde). According to Prof. Dr. Sudikno Mertokusumo, S.H., The Review is a legal effort against the final verdict and the verdict struck outside the defendant’s presence (verstek), and which is no longer open to the possibility of filing a fight (Soeroso, 2010). A court ruling that is of legal force can still be made by the Law Review by including the obvious reasons, namely:
1. New circumstances (novum)

One of the acceptable reasons for the submission of a judicial Review is the presence or discovery of new evidence (novum) that has never been presented in the trial. This new evidence can be either an object or a witness of a strong conjecture.

2. Judge error or error

As a human being, judges can make court rulings wrong. In judicial practice, the verdict of the first court (District Court) can be corrected by way of appeal to the second court (High Court) as well as to the third level (Supreme Court). Correction of verdicts in the tiered justice system sometimes results in a wrongful verdict in both the application of the article and the consideration of the law. Against such rulings, the legal efforts of the Review may be filed (Harahap, 2008).

The error or misrepresentation of the judge may be the basis of the Review of the Plaintiff because in the Supreme Court's Decision does not explain further related to the deed PPJB No. 32 which in the process of making there is malpractice carried out by the notary, namely concerning the clause that there has been a payment at the time of the signatory of the deed and make the deed PPJB No. 32 as a proof of payment or receipt, which there is no payment process at the time of the signatory of PPJB deed, or if the Plaintiff already has new evidence (novum) in this case may file a Review.

Conclusion

1. Malpractice is better known in medical science, but now the term has been widespread in various disciplines including in the field of notarization, notary malpractice elements are:
   a. Forms of denial or deviation.
   b. Lack of ability of notary duties and responsibilities, either due to errors or omissions that can be accounted for to them to carry out professional obligations or based on trust.
2. Notary accountability for malpractice in the creation of deed can be legal and moral responsibility. In this case notary Nitra Reza, S.H., M.Kn., is responsible for the creation of PPJB deed No. 32, because the PPJB deed there is an element of malpractice that it does, namely negligence when listing the clause that there has been payment and making the PPJB deed as
proof of payment or receipt, which there is no payment process at the time the PPJB deed is signed. On the basis, that notary Nitra Reza, S.H., M.Kn., may be burdened with civil liability Article 1366 of the Penal Code, responsibility under The Notary Department Regulation Article 85, and responsibility under the notary code of conduct in the form of sanctions reprimand, warning, schorzing (temporary termination) of the membership of the association, onzetting (respectful dismissal) of the members of the association, to the disrespectful dismissal of the membership of the association.

3. Dispute resolution at the level of the District Court and High Court states the deed PPJB No. 32 becomes void because there is malpractice in the process of making the deed, but at the level of Cassation in the Supreme Court, the Panel of Judges argues otherwise by rejecting the plaintiff's claimant entirely, because the witnesses presented by the plaintiff are witnesses who cannot be asked for testimony in the trial and the Panel of Judges at the High Court level has been wrong in applying judex facti, but the Supreme Court's ruling does not reflect justice. The unfairness is in Mefrizar Muchlis as Plaintiff, because there is no payment process for the PPJB. Plaintiffs can file a legal action against the award with a Review.

Suggestions

A notary in making a deed must be following the facts, even though the deed is made based on the wishes and wills of the parties, but must still see the evidence along with the documents as evidence that what the parties say is true.

Notary in carrying out the duties of his office to always act trustingly, honestly, carefully, independently, impartially, thoroughly and carefully, because negligence committed by the notary may result in harm to the parties or the notary itself.

References


