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Legal Consequences of Depositing Land Certificates in Land Sale and Purchase Agreements for Notaries

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Abstract

A notary is a public official who is authorized to perform certain duties according to law, such as making authentic deeds. However, in practice, notaries often take additional legal actions, such as withholding certificates during the implementation of a sale and purchase agreement to protect the interests of all parties involved. This practice is common but is not regulated in the duties and functions of a notary, resulting in a legal vacuum that can pose risks and legal consequences for notaries. Some court decisions even involve notaries in legal disputes. To ensure certainty, efficiency, and justice for all parties, including notaries, it is very important to find a solution that regulates and facilitates the storage of certificates in a sale and purchase agreement. The study uses the Normative Juridical method (legal research), namely legal research using legal norms as the object of its research based on an internal perspective that is able to provide legal arguments when conflicts, ambiguities, or legal vacuums are found. The researcher is interested in discussing further the Legal Consequences of Depositing Land Certificates in Land Sale and Purchase Agreements for Notaries.

Keywords: Certificate, Agreement, Notary

Introduction

Law often lags behind the actions and developments of society, creating legal gaps that result in new legal problems. Named agreements are expressly regulated by law, while unnamed agreements arise from the development of previously regulated obligations. A specific example is a sales and purchase agreement, which exists to bridge the parties when certain conditions cannot be met. In this case, the notary who made the agreement can be trusted to keep the certificate until the transaction can be carried out.

The Sale and Purchase Agreement (PPJB) is a preliminary contract made between a prospective seller and a prospective buyer based on an agreement before the sale and purchase is carried out. PPJB can be made in the form of a handwritten deed or a notarial deed ^[1]. In making a PPJB, the parties often choose a notarial form, namely a deed that is read and signed before a notary ^[2]. The contents of the deed also reflect the wishes of the parties and as a public official, the notary is fully responsible for the contents of the deed ^[3].

In addition, the notary is obliged to ensure that the date and the person signing are competent and authorized to minimize problems in the future that have legal consequences for the notary. According to the provisions of Article 16 paragraph (1) letter a of the UUJN, the notary is obliged to act in a trustworthy, honest, diligent, independent and impartial manner and to protect the interests of the parties involved in the legal act. This means that a notary is not only independent in carrying out his/her duties, but also must not take sides/take sides and must protect the interests of the parties involved.

¹ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris*, (Bandung: Refika Aditama, 2011), p.8.

² *Ibid.*

³ *Ibid.*

This is the basis for assigning a notary to make a deed of sale and purchase of a PPJB object. A notary is considered a neutral party, so to ensure protection, legal certainty and justice for the parties, only a notary can be considered the most appropriate body to store land book extracts.

Notaries in Indonesia are increasingly requesting that land certificates be entrusted to them in connection with the PPJB (Sales and Purchase Agreement). Some believe that this is in the interests of the parties involved, while others see it as a way to avoid problems later. Notaries are required to be impartial and are considered a safe intermediary to hold land certificates. Currently, if a buyer or seller does not hold the certificate until full payment has been made and administrative requirements have been met, a notary is the only trusted option. However, the notary's role as the custodian of land certificates is not legally protected, putting them in a difficult position. The absence of clear legislation regarding the authority of a notary to accept land certificates reduces the need for certainty, fairness, and efficiency in land transactions. Notaries are often disadvantaged in legal disputes between buyers and sellers. The importance of notaries in land transactions should not be underestimated.

The development of society that is faster than the development of laws and regulations becomes a separate problem in relation to things that are not or are not regulated by law. The emergence of behaviors that have legal consequences but there is no positive law that regulates it, then there is a legal vacuum. As stated by Hario Mahar Mitendra, it is impossible for laws and regulations to regulate all human life completely, so that a situation can occur where existing regulations are considered incomplete and cannot provide legal certainty for society. As a result, a legal vacuum arises in society.

According to Article 1 number 1 of the UUJN, a Notary is a public official who is authorized to make authentic deeds and perform other duties in accordance with the law. However, in order to protect the parties involved and ensure an efficient process, notaries often go beyond their prescribed duties and take additional legal actions. For example, they can hold certificates during the implementation of a sale and purchase agreement to protect the interests of both parties. This practice is common, even though it is not regulated in the duties and functions of a notary. This legal vacuum can pose a risk to notaries, who may face legal consequences if an error occurs. Several court decisions have even dragged notaries into legal disputes. Therefore, it is important to find a solution that regulates and facilitates the storage of certificates, thus ensuring certainty, efficiency, and justice for all parties involved, including notaries. Based on the description of the background of the problem above, the problem can be drawn, namely What are the legal consequences of depositing land rights certificates in a sale and purchase agreement.

Methods

The research method in this study is the normative legal research method, which is a method of researching law from

an internal perspective with legal norms as the object of research. The researcher uses the type of Normative Juridical legal research (legal research), which is a legal research using legal norms as the object of research based on an internal perspective that is able to provide legal arguments when conflicts, ambiguities, or legal gaps are found ^[4]. The approach used in this legal study is the statute approach and the conceptual approach. Qualitative descriptive data analysis is carried out by analyzing secondary data that is narrative and theoretical, the definition and substance of which are sourced from several literatures which are then analyzed in order to answer the problem of the legal consequences of depositing land rights certificates in a sale and purchase agreement.

Discussion

a. Legal Void of Depositing Land Certificates in Sale and Purchase Agreements.

Notaries are not authorized to keep property deeds, although this often occurs in purchase contracts ^[5]. UUJN, the law on notaries, does not mention the storage of deeds by notaries. Notaries are public officials who are authorized to make public deeds and have other authorities stated in the law. When a notary is assigned to make a property deed, he has no other authority. Neither UUJN nor other laws regulate the transfer of land deeds to notaries ^[6]. Notaries also cannot be forced by the parties to keep land deeds with them. According to UUJN, a notary must act in a trustworthy, honest, diligent, independent and impartial manner and protect the interests of the parties. However, this provision cannot be used as a basis for notaries to accept the storage of land registration deeds ^[7]. According to the provisions of the UUJN, when a Notary receives a land certificate deposit, it is considered as a deposit of goods. The Civil Code accommodates the deposit of goods in the provisions of Articles 1694 to 1739 of the Civil Code, which state that the deposit of goods occurs when someone receives an item from another person with the condition to maintain and return it in its original condition. However, the Civil Code does not explicitly define the deposit of goods. Article 52 paragraph (1) of the UUJN also prohibits Notaries from making deeds for themselves, their spouses, or other people who are related. Although a Notary is one of the parties to the deposit agreement, there are no provisions regarding the deposit of land certificates to a Notary in the UUJN and other laws and regulations. Thus, there is a legal vacuum regarding the deposit of land certificates in the PPJB.

b. Consequences of Depositing Land Certificates in Sales and Purchase Agreements

A notary is a public official who is authorized by law, specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. It is very important for a notary to comply with the provisions contained in this law and other related regulations

⁴ Johnny Ibrahim, *Metodologi Penelitian Hukum Normatif*, (Malang : Bayumedia Publishing, 2008), p. 27

⁵ Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, ((2021)), p. 69-90.

⁶ Misbah Imam Subari & Justicia Firdaus Kurniawan, *Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), p. 144-161.

⁷ Kurnia Rheza Randy Adinegoro, *Tantangan Implementasi Sertipikat Tanah Elektronik di Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional Republik Indonesia*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), p. 130-143.

in carrying out his/her duties^[8]. However, there are several cases where a notary is held accountable for actions taken outside the limits set forth by law. For example, acting as a trustee for a client's land certificate is not within the scope of a notary's authority. Although there are no specific regulations governing the deposit of certificates with a notary, this is a common practice, usually occurring when buying or selling property. The absence of explicit provisions for accepting or rejecting the deposit of certificates and the notary's responsibilities in this context have legal implications and potential risks and future responsibilities for all parties involved^[9].

Currently, there are no regulations governing the authority of a Notary to accept or reject the deposit of land certificates, and there are also no specific regulations governing the responsibilities of a Notary in accepting the deposit of land certificates. This has legal implications and potential risks for the parties involved and the Notary^[10]. Several cases have occurred where land certificates entrusted to a Notary were lost, resulting in the Notary being reported to the East Java Regional Police in Decision Number 877/Pdt.G/2022/PN.Sby. In another case, a Notary was accused of collaborating with a buyer to illegally take control of the seller's land because the Notary refused to hand over the certificate before the buyer paid the full selling price. However, the judge dismissed the lawsuit against the Notary, and acknowledged that the Notary's actions were in accordance with his duties to protect the interests of the parties involved as in Decision Number 976/Pdt.G/2019/Pn.Jkt.Brt. These cases highlight the need for clearer regulations governing the authority and responsibilities of Notaries in accepting the deposit of land certificates

A notary is a public official appointed by the state to carry out certain tasks, such as making authentic deeds and storing them in a notary protocol. The trust given by the government allows notaries to act on behalf of the state, and they are also trusted by the community who need their services. It is very important for notaries to act honestly, trustworthy, and impartially in fulfilling their responsibilities as stated in Article 16 paragraph 1 letter a of the UUJN. This includes making authentic deeds and following the obligations set out in the Notary's code of ethics, which states that notaries must act with honesty, independence, impartiality, and a strong sense of responsibility based on laws and regulations. This ensures that the notary's actions are in line with legal standards and the contents of the notary's oath of office^[11].

Notaries have an ethical obligation to be honest, independent, and impartial in their work^[12]. They must not rely on other parties or use their services that could interfere with their independence. Impartiality means that a notary does not side with any party and always acts in the interests of truth and justice. Notaries must also be responsible for the actions, deeds, and trust given to them as public officials^[13]. According to Article 4 paragraph 5 of the Notary Code of Ethics, notaries are prohibited from signing deeds that have been prepared by other parties. This is because notaries must be independent, honest, and impartial in carrying out their duties, and signing deeds made by other parties does not fulfill this obligation. In addition, notaries are not allowed to act as a party in making authentic deeds for their own family members and are prohibited from sending minutes of deeds or blank deeds to clients to be signed as stated in Article 52 of the UUJN^[14]. Signing a notarial deed is an absolute requirement for the deed to be considered authentic^[15].

Notaries have certain obligations and responsibilities in carrying out their practice. One of the main points is that they must ensure a definite signing date. They are also prohibited from taking clients from other notaries^[16]. This means that they cannot make any attempt, either directly or indirectly, to transfer someone from another notary to their own notary. Notaries are expected to maintain good relations with their fellow co-workers and not make any attempt to take clients from them^[17]. In addition, notaries are not allowed to force clients or their representatives by withholding documents or applying psychological pressure so that they are willing to make a deed before a notary. Ultimately, every deed must be made without coercion in any form, because it is an individual's right to choose a notary freely^[18].

Notaries have an obligation to be impartial when making authentic deeds. If notaries fail to fulfill this obligation, they may face administrative sanctions such as verbal or written warnings, temporary or permanent dismissal as stipulated in Article 91A of the UUJN^[19]. The severity of the sanction depends on the level of error shown by the notary. If the notary includes himself, his spouse, children, or family members as parties in an authentic deed, and as a result takes sides in a dispute, the authentic deed may turn into a private deed or lose its legal validity. In such a case, the injured party may file a lawsuit against the notary to request compensation for costs and interest. However, if there is an agreement regarding compensation between the notary and the injured party, then there is no need for a lawsuit^[20]. The law provides protection to those involved in authentic deeds, emphasizing

⁸ Khafid Setiawan, et.al., *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, 2021, p. 47.

⁹ Hilbertus Sumpisius M. Wau, and T. Keizerina Devi Azwar, *Analysis of the Role of PPAT as a Shield in Illegal Property Transactions to Intercept the Land Mafia*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), p. 88-101.

¹⁰ Meralda Amala Istighfarin, *Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain*, Acten Journal Law Review, Vol. 1, No. 1, (2024), p. 65-85.

¹¹ Tan Thong Kie. *Studi Notariat Serba-Serbi Praktek Notaris*. (Jakarta: PT Ichtiar Baru Van Hoeve, 2010), p. 380.

¹² Bayu Indra Permana, et.al., *Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence*. Jurnal Justiciabelen. Vol. 7, No. 1, 2024, p. 70.

¹³ Ahmad Reza Andhika, *Pertanggungjawaban Notaris Dalam Perkara Pidana Berkaitan Dengan Akta Yang Dibuatnya Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004*, Premise Law Journal, Vol. 2., No. 6., 2016., p. 1-20.

¹⁴ Endang Widiastuti. *Notaris dan Kode Etik Profesi*. (Jakarta: Sumber Ilmu, 2008), p. 79

¹⁵ Maya Puspita Dewi, Herowati Poesoko, & Aries Harianto, *Prinsip Pembacaan Akta Oleh Notaris Dihadapan Penghadap dan Saksi*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, (2021), p. 91-115.

¹⁶ Vikriatuz Zahro, Iswi Hariyani, & Iwan Rachmad Soetijono, *Judicial Implications of the Issuance of Governotes by A Notary as Basis of Disbursing Credit of Banking*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), p. 102-118.

¹⁷ Syahrul Effendie. *Notaris Dan Hukum Pidana*. (Surabaya: Lentera, 2010), p. 12.

¹⁸ Nadia Pitra Kinasih, and Azizahtul Himma, *Akibat Hukum Notaris Menggunakan Website Pribadi Dalam Memberikan Pelayanan Jasa Kepada Masyarakat*, Acten Journal Law Review, Vol. 1, No. 1, (2024), p.39-64.

¹⁹ Soegondo R. Notodisorjo. *Hukum Notariat di Indonesia (Suatu Penjelasan)*. (Jakarta: Raja Grafindo Persada, 2010), p. 9.

²⁰ Riswanto Achmad. *Notaris sebagai Pejabat Umum*. (Jakarta: Rineka Cipta, 2015), p. 69.

the importance of notaries fulfilling their obligation to be neutral and impartial.

If a notary is not neutral or impartial in making an authentic deed, there are two legal consequences. First, the notary can be subject to administrative sanctions in accordance with Article 91A of the UUJN. These sanctions include warnings, temporary suspension, honorable suspension, and dishonorable suspension. The Regional Supervisory Council (MPD) has the authority to verbally reprimand a notary who acts in favor of one of the parties involved. The Regional Supervisory Council (MPW) has the authority to temporarily dismiss a notary after receiving input from the MPD and holding a hearing. The Central Notary Supervisory Council (MPP) has the authority to honorably dismiss a notary after considering input from the MPD and MPW, and after conducting an examination of the notary. The Minister of Law and Human Rights has the authority to dishonorably dismiss based on a proposal from the MPP^[21]. Second, if the notary is biased, the authentic deed he makes only has the force of a private deed. The injured party can ask the notary to pay compensation for costs and interest in accordance with Article 52 paragraph 2 of the UUJN^[22].

Notaries who show bias towards one party in making an authentic deed will face consequences. The deed he made will be downgraded to a deed under hand, and the injured party has the right to sue the notary for compensation for costs and interest. If the court wins the injured party and determines the law to be permanent, then the notary is obliged to provide compensation. It is very important for notaries to comply with positive law and be impartial, because they can face strict administrative, civil, and criminal sanctions for negligence, lack of caution, or errors in carrying out their duties. Legal liability for notaries who are impartial includes considering legal protection for notaries who make mistakes during the examination process and providing appropriate sanctions.

c. Limits of Liability for Certificate Deposits in Sales and Purchase Agreements

According to Hans Kelsen, legal responsibility refers to the idea that a person is liable to face sanctions if they behave in a way that is contrary to the law^[23]. On the other hand, Soekidjo Notoatmojo is of the opinion that responsibility is a consequence of a person's actions, especially those related to ethics and morals^[24]. In order for a person to be said to be responsible, he must be conscious and not in a state of illness, whether chronic or temporary, not have a physical disability, not be in a state of shock or hypnosis, and be aware of the actions he has taken and the impact and consequences of

those actions^[25]. In the legal realm, the terms "responsibility" and "obligation" are used interchangeably, with responsibility encompassing the obligation, decision, skill, and responsibility to comply with the law^[26]. "Obligations", on the other hand, refer to broader risks and responsibilities, including existing or potential rights and obligations, such as losses, threats, crimes, costs, or conditions requiring legal action. The use of the term "responsibility" is considered more appropriate when discussing legal liability, because this term includes the principle of responsibility for wrongdoing^[27].

Paul F. Camanisch argues that moral responsibility is inherent in a position, such as the position of Notary^[28]. He stated that each position has specific authority and responsibility, which is guided by the Code of Ethics of the Position. The position of Notary, for example, is regulated by the Code of Ethics of the Notary, which must be complied with in accordance with applicable laws and regulations^[29]. It is important for individuals who hold such positions to uphold positive law and adhere to ethical guidelines. According to the theory of legal responsibility, anyone who commits an unlawful act, including government officials and professionals in office, must be held accountable for their actions, regardless of their intentions. In the case of a Notary, if proven to have committed a violation, the Notary may be subject to sanctions, which can be civil, administrative, or criminal sanctions^[30]. These sanctions have been regulated in the Notary Law and the Notary Code of Ethics. However, it is important to note that the set of sanctions for violations has been revised in the recent amendments to the UUJN, with sanctions now directly mentioned in the relevant articles, namely CHAPTER XI Article 84 and Article 85 concerning Sanctions Provisions^[31].

The magnitude of the risk and responsibility of a Notary who is in the position of recipient of goods in the form of Land Title Certificates belonging to his/her client raises the potential for violations for the Notary concerned, which can result in liability for his/her actions. On that basis, this time we will discuss and describe the forms of liability of a Notary as the recipient of the deposit of Land Title Certificates belonging to his/her client, which will be divided into 3 forms of liability, namely, Civil Liability of a Notary, Criminal Liability of a Notary, and Administrative Liability of a Notary. Among them are as follows:

The civil liability of a notary in the custody of land certificates includes reimbursement of costs, damages, and interest. If the notary includes a custody clause in the deed he makes for the custody of a land certificate owned by a client,

²¹ Fenny Tria Yunita & Malik Wahyu Kurniawan, *Perluasan Kewenangan Pelaporan Majelis Pengawas Notaris: diskursus kepastian hukum dan keadilan substantif*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, ((2021), p. 1-21.

²² Rifandika Naufal Afif, Andi Muh Ihsan, & Dita Elvia Kusuma Putri, *Akibat Hukum Bagi Notaris Terhadap Penyalahgunaan Keadaan Dalam Pembuatan Akta Autentik*, Jurnal Ilmu Kenotariatan, Vol. 5, No. 1, (2024), p. 45-61.

²³ Somardi, *Teori Umum Hukum dan Negara: Dasar-Dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskriptif Empirik*, (Jakarta: BEE Media Indonesia, 2007), p. 81.

²⁴ Soekidjo Notoatmojo, *Etika dan Hukum Kesehatan*, (Jakarta: Rineka Cipta, 2010), p. 13.

²⁵ Edi Yunara, *Korupsi dan Pertanggungjawaban Pidana Korporasi*, (Bandung: Citra Aditya Bakti, 2012), p. 54.

²⁶ Ridwan P.R., *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada, 2006), p. 336.

²⁷ *Ibid*.

²⁸ E. Sumaryono, *Etika Profesi Hukum : Norma-Norma Bagi Penegak Hukum*, (Yogyakarta: Kanisius, 1995), p. 147.

²⁹ Liliana Tedjosaputro, *Mal Praktek Notaris Dalam Hukum Pidana*, (Semarang: Agung, 1991), p. 4.

³⁰ Munir Fuady, *Perbuatan Melawan Hukum*, (Bandung: Citra Aditya Bakti, 2010), p. 147.

³¹ Habib Adjie, *Penafsiran Tematik Hukum Notaris Indonesia : Berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, (Bandung: Refika Aditama, 2015), p. 57.

the notary can be held responsible^[32]. For example, if the notary includes a clause in the deed of the Conditional Sale and Purchase Agreement (PPJB) stating that the land certificate will be entrusted to the notary until certain conditions are met, then the notary has essentially made a hidden custody agreement. Thus, the notary violates the provisions of Article 52 paragraph (1) of the UUJN which prohibits notaries from making deeds for themselves, their husband/wife, or their family.

The notary's responsibility for this violation is outlined in Article 52 paragraph (3) of the UUJN. According to this article, violation of the provisions in paragraph (1) results in the deed only having evidentiary force as a private deed if signed by the person concerned. However, this does not reduce the notary's obligation to reimburse costs, damages, and interest to the injured party. Therefore, if a notary entrusts a certificate of land rights belonging to his client and includes a clause related to the entrustment in the deed, then the result is that the authentic deed is downgraded to a private deed which only has evidentiary force as a private deed. As a result, the injured party can file a civil lawsuit with the court to request reimbursement of costs, damages, and interest from the notary.

Overall, notaries can be held responsible for including deposit clauses and hidden deposit agreements in the deeds they make. Violation of these provisions can result in the deeds they make being inauthentic and the notary being responsible for replacing costs, damages, and interest. This allows the injured parties to seek compensation through a civil lawsuit in court.

According to Article 1694 of the Civil Code, if a Notary receives a client's land title certificate to be deposited, then this constitutes a deposit agreement, which makes the Notary a trustee. As the recipient of the deposit, the Notary must comply with the provisions stipulated in Articles 1694 to 1739 of the Civil Code. The Notary's obligations include the responsibility to maintain the deposited goods like his own goods, as stated in Article 1706 of the Civil Code. Furthermore, Article 1707 stipulates that this provision must be implemented more strictly under certain conditions. If the Notary is negligent in returning the deposited goods, the Notary can be held accountable unless there is an undeniable event or due to force majeure. In order to be released from his responsibility as the recipient of the mandate, the Notary must prove that the Notary was truly in a state of force majeure and was not negligent. If proven negligent, the Notary remains responsible for the loss or damage to the Land Title Certificate deposited by his client.

The process of replacing damaged or lost land certificates is by submitting a replacement application to the BPN. This application must be accompanied by supporting documents, such as a photocopy of the owner's ID card, proof of the last tax payment, a photocopy of the lost certificate, and a power of attorney from the owner to the notary. The BPN then checks the completeness of the documents and announces the oath-taking ceremony in the local media to allow for objections or lawsuits. In addition, the BPN will re-measure

the land to ensure that it matches the information listed on the lost certificate^[33]. If no objections are filed within 30 days, the BPN will issue a replacement certificate. This entire process follows the regulations outlined in Government Regulation No. 24 of 1997. The notary is responsible for covering the costs incurred during the certificate replacement process as a form of good faith and accountability^[34].

The issue of criminal liability for notaries is not specifically regulated in the UUJN. However, if a notary is proven to have committed a crime, the notary can still be held criminally liable by referring to the provisions of the Criminal Code. Article 63 paragraph (2) of the Criminal Code states that every crime or criminal act that is not regulated in special criminal regulations can be subject to general criminal regulations. To determine whether an act can be held criminally liable, the intent of the crime must be explained, and it must be determined whether the elements of a crime have been fulfilled. The elements of a crime include subjective elements, such as intent and negligence, as well as objective elements, such as human actions, consequences of actions, unlawful and punishable nature, and circumstances^[35].

In the case of a notary acting as a trustee of a client's land title certificate, there is a high risk of criminal liability, especially in cases of embezzlement. Embezzlement occurs when a notary intentionally and unlawfully possesses goods, in this case a client's land title certificate, which are in his/her possession not because of a criminal act. The act of entrusting a land title certificate to a notary has the potential for embezzlement due to the high economic value of the certificate and the authority and control that the notary has over the certificate. If the notary acts in bad faith, they can abuse their position to intentionally misuse the client's property.

Allegations of embezzlement can also arise from the negligence of a notary in handling entrusted goods, such as land title certificates. Negligence refers to the lack of care or attention that should be exercised by a notary in his role as the recipient of the mandate. Article 372 of the Criminal Code defines embezzlement and states that anyone who intentionally and unlawfully possesses goods that are within his control, but which are in his control not because of a crime, can be punished for embezzlement and is subject to imprisonment or a fine^[36].

In conclusion, although criminal liability for notaries is not explicitly regulated in the UUJN, they can still be held criminally liable for violations committed based on the general criminal provisions outlined in the Criminal Code. Embezzlement is a common crime that notaries can face, especially in the case of misuse of land certificates belonging to clients. Whether through intentional actions or negligence, notaries can be held liable for the unauthorized ownership and use of their clients' property.

Based on Article 372 of the Criminal Code, if a Notary is charged with embezzling a Land Title Certificate belonging to his/her client and is proven guilty, then the Notary can be punished with a maximum imprisonment of four years or a

³² Bayu Praditya Herusantoso, *The Antinomy of Agrarian Reform Regulations After the Establishment of the Land Bank Authority*, Jurnal Ilmu Kenotariatan, Vol. 5, No. 1, (2024), p. 17-27.

³³ Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*, (Jakarta: Prenadamedia Group, 2015), p. 287

³⁴ M. Arba, *Hukum Agraria Indonesia*, (Jakarta: Sinar Grafika, 2017), p. 169

³⁵ Laden Marpaung, *Asas-Teori-Praktik Hukum Pidana*, (Jakarta: Sinar Grafika, 2008), p. 5.

³⁶ Tongat, *Hukum Pidana Materil*, (Malang: UMM Press, 2006), p. 58.

maximum fine of nine hundred rupiah. In addition to the crime of embezzlement, a Notary can also be charged with the crime of document forgery if the Notary acts as a trustee for a Land Title Certificate belonging to his/her client. This crime is regulated in Article 263 of the Criminal Code, in conjunction with Article 264, Article 266, and Article 55, with a maximum imprisonment of eight years.

According to the Notary Law, a Notary can be subject to administrative responsibility for the custody of his/her client's land title certificate only if he/she is involved in a criminal case. Temporary suspension can be imposed if the Notary is detained as a suspect for a crime, such as embezzlement, with a threat of a four-year sentence. This is based on Article 9 paragraph (1) letter e of the UUJN. Dishonorable dismissal can be imposed by the Minister if the Notary is convicted of committing a crime that is punishable by imprisonment for five years or more, based on a court decision that has permanent legal force. An example of such a crime is forgery of a letter with an attachment that is punishable by a maximum of eight years' imprisonment based on the Criminal Code. Thus, the administrative sanctions for a Notary who has a client's land title certificate are temporary suspension and dishonorable dismissal, according to the conditions and the crime committed.

Conclusion

The absence of regulations regarding the deposit of deeds with a notary in the PPJB has created a legal vacuum, making notaries vulnerable to potential sanctions. The absence of this regulation is a threat to the notary profession and can lead to the degradation of deeds. To overcome this problem, there is a need to deregulate the authority of notaries regarding the storage of deeds. This will ensure that notaries have legal certainty and protection when providing services to the public. One solution is to use an independent deposit institution as an alternative for notaries to be involved in certain legal actions, agreements, determinations, and events. By implementing these steps, notaries can avoid activities that have the potential to violate the law and uphold the integrity of their profession.

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