RESPONSIBILITY OF NOTARY AGAINST DEED MADE BY FALSE STATEMENT BY THE PARTIES

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Abstract: This research is intended to examine and analyze the criteria of legal action. Notary in the making of deed which can be legally accountable (civil law, Criminal law or administrative law). This research is normative law research by using approach method. The results of this study are notaries as general officials responsible for the deed he made. Notary who in carrying out his position is proven to conduct tour, the full Notary shall be responsible by imposition of criminal sanction, civil penal sanction, and criminal sanction of imprisonment.

Keywords: liability, notary

I. INTRODUCTION

Notary Public as a general official who in Dutch term is Openbare Ambtenaren contained in Article 1 of Notary Public Regulation stipulates that a Notary is a public official who is solely authorized to make an authentic deed of all deeds, agreements and stipulations required by a general rule or by the interest is desirable to be declared in an authentic deed, to guarantee the certainty of the date, to retain its act and to grant it, copies and quotes, all to the extent of the making of the deed by a general rule not also assigned or excluded to officials or others.¹

Notary is a public official authorized to make authentic deeds and other powers. This is as regulated in Article 1 (1) of Law Number 2 Year 2014 regarding the amendment to Law Number 30 Year 2004 regarding Notary Position (hereinafter abbreviated as change of UUJN). Notary positions are not placed in judiciary, executive or legislative bodies.² Therefore, the Notary must act honestly, thoroughly, independently and impartially in performing legal acts, in accordance with the provisions of Article 16 number 1 letter (a) of Law Number 30 Year 2004 regarding Notary Position (hereinafter referred to as UUJN).

¹ G.H.S. L.Tobing, Peraturan Jabatan Notaris, Erlangga, Jakarta, 1992, p.3
Notariable Deed was born because of the direct involvement of the party facing the Notary; they are the main actors in making a deed so as to create an authentic deed. Deed made by a Notary must contain the conditions necessary to achieve the authenticity of the deed, for example in the reading of the deed, the Notary is required to explain the contents of the deed as regulated in Article 16 paragraph (1) letter l UUJN. Therefore, the parties may decide freely to agree or not to the contents of the deed to be signed as long as it is not contradictory to Article 1320 of the Civil Code (hereinafter referred to as the Civil Code).

Failure to do so as required by law shall result in Notary being responsible. The responsibilities which may be subject to the Notary are in the form of administrative, civil or criminal liability. Criminal liability Notaries rely on the principle of error. This can be seen in decision 146 / K / PID / 2015. In the ruling, it is stated that the defendant who is a Notary has been proven legally and convincingly to commit a letter fraud in the form of an authentic deed. This happens because the defendant only follows the wishes of one of the parties in making the deed, namely the buyer who also became the defendant in a separate case. Defendant as a Notary has violated Article 264 paragraph (1) to-1 Book of Criminal Law (hereinafter abbreviated KUHP) that is falsification of letter in the form of authentic deed, so that defendant shall be responsible for the consequences caused for his actions.

Based on the preliminary described above, the problem to be studied in this research is whether the legal action criteria of Notary in the making of deed which can be accounted for by law (Civil Law, Criminal Law or Administrative Law)?

The purpose of this study is to examine and analyze the criteria of legal action of Notary in the making of deeds that can be accounted for by law (Civil Law, Criminal Law or Administrative Law).

This type of research is normative legal research using legal approach, conceptual approach, and case approach. The technique of collecting legal material used in this research is literature study. The collected legal materials will be analyzed using legal interpretation methods.

As an analytical tool to the problems to be studied then there are several theories used, namely:

1.1 Theory of Accountability

Accountability comes from the word responsibility, which means the state is obliged to bear everything (if there is something can be prosecuted, blamed, etched). According to Hans Kelsen divide the responsibility into 4 (four) parts consisting of:

a. Individual responsibility is an individual responsible for his own offense;

b. Collective accountability means that an individual is responsible for an offense committed by another;

c. Accountability is based on an error which means that an individual is liable for a breach by intentional and foreseeable intent to cause harm;

d. Absolute accountability which means that an individual is responsible for the violation he committed by unintentional and unexpected.

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1.2 **The Theory of Legal Certainty**

Certainty in understanding has the meaning of a provision, or provision, whereas if the word certainty is combined with the word law becomes legal certainty, which has a meaning as a provision or legal provision of a country that is able to guarantee the rights and obligations of every citizen. Normatively a legal certainty is when a rule is created and enacted as it is clearly defined and logical. Clearly, in the sense that there is no doubt (multi interpretation) and logical does not cause clash and haziness of norm in norm system with each other. The blurring of norms arising from the uncertainty of the rule of law can be multi-interpretation of something in a rule.

With regard to the Theory of Legal Certainty Jeremy Bentham points out that: ⁵

"The legal certainty (zekerheid door het recht) for individuals in society is the ultimate goal of the law. Further, Bentham formulates that the ultimate goal of the law is to ensure as much happiness to as many people as possible."

According to Utrecht: ⁶

"Legal certainty contains two meanings, namely first, the existence of a general rule making the individual know what the act may or may not be done, and secondly, in the form of legal security for the individual from the authority of the government because with the existence of general rules that the individual can know what which the State may impose on or against any individual".

### II. RESULT AND DISCUSSION

The function of authentic deeds in the case of proof of course is expected to explain in full in the process of verification in the court, because in the judicial process based on criminal procedural law, in which there is a process of proof, which emphasizes the legal evidence according to article 184 Book of Law Criminal Procedure (hereinafter abbreviated KUHAP). ⁷ Authentic deeds as Notary products in proof in the trial are categorized as letter proof. As set forth in article 1 number 1 of the amendment to UUJN that "a Notary is a public official, authorized to make authentic deeds and other authorities as defined in this law."

Legal Profession Notary is a profession that demands the fulfillment of moral values and development. Moral value is the power that directs and underlies the noble deeds, therefore Notary demanded to have a strong moral value. ⁸ Therefore, any act which deviates from the legislation done by the Notary person in performing his/her position must be legally accountable.

Implementation of the notary's office, especially related to the authority of Notary in making the deed, there may be a violation made by Notary. The offense must have consequences as a form of a Notary's accountability to his/her position.

The legal responsibility of a Notary in running his profession according to Lanny Kusumawati classified in 2 (two) forms:

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a) Liability of civil law that is, if the Notary has made a mistake by breaking the promise as determined in the provisions of Article 1234 of the Civil Code. Against such errors has caused the loss of the client or other parties.

b) Criminal liability when a Notary has committed a legal act that is prohibited by law or commits a wrong/unlawful act either because of intentional or otherwise that causes the loss of another party.  

In addition to civil and criminal liability, a Notary who commits an act against the law in carrying out his duties and positions, is also due to the responsibility of the code of ethics in the position of Notary. Administrative and civil liability shall be liable to sanctions in favor of the acts committed by the person concerned, while criminal liability subject to criminal sanctions shall be directed against the offender (person) who commits such proceedings.

2.1 Accountability of Notary Law in the Establishment of Deed

Notary as a public official, authorized to create an authentic deed. With respect to such authority, if a Notary performs an action outside the designated authority, the Notary deed is not legally binding or non-negotiable.

Accountable Notary in a statute when committing an offense (onrechtmatigedaad). Thus, the act of infringement referred to when fulfilling the element of unlawful acts, the existence of errors and accompanied by the losses incurred. The act of law in question is broadly defined, that is an act not only violates the law, but also violates the propriety, decency or rights of others and causes harm. An act is categorized as unlawful if it violates the rights of others, contrary to the legal duty of the offender, contrary to morality and propriety in taking care of the self-interest and property of other people's daily life.

Determining the existence of a civil liability by a Notary must be fulfilled with three conditions, namely:

a. There shall be the act of a lawful Notary whose elements are expressly defined by law;
b. The act of the Notary is contrary to law, and there must be a mistake from the Notary;
c. Mistakes or omissions in the sense include elements contrary to law and there must be unlawful acts. So basically any form of violation or negligence committed Notaries always contain the nature of the law against the action.

The term of unlawful acts has a wider scope than the criminal act. The difference between legal action and criminal acts according to Rachmat Setiawan is: "Every criminal act is always formulated carefully in the law, so that its nature is limited. On the contrary, unlawful acts are not. The law only specifies one general article, which gives legal consequences against unlawful acts ".

Article 1365 of the Civil Code states any unlawful act that carries harm to another person, requires a person who, for whose fault, issues the loss, compensates for the loss. So the article is the basis for declaring the act done Notary is a lawless act. In the account of the civilian notary, the judge in handling a civil case involving a Notary seeks a formal truth from an authentic deed, namely the truth of what is obtained on the basis of what the parties have expressed.

Although the regulation of unlawful acts in the Civil Code is only in a few chapters, as is the case in other continental European countries. But the facts on the ground show that the civil lawsuits in court are dominated by unlawful acts, in addition to the breach of contract claims. Therefore, it can be understood how important it is to know how the legal arrangements and juridical theories about the act against the law and practice, especially those that occurred in court.  

Civil liability is closely linked to unlawful acts and the substitute for losses caused by an individual's embassy. The Civil Code is a mecca of civil law in Indonesia, including a direction for law relating to unlawful acts, regulates losses and damages in relation to unlawful acts by 2 (two) approaches as follows:

a. General compensation;
b. Special compensation

The provisions on general compensation are provided for in the Civil Code in the fourth part of the third book, starting with Article 1234 of the Civil Code up to Article 1252 of the Civil Code. In addition to general damages, the Civil Code also regulates special remedies against damages arising from certain engagements. In relation to damages arising out of an unlawful act, other than compensation in its generic form.

The forms of indemnification against unlawful acts known by law are as follows:

a. Nominal compensation.
   If there is any serious unlawful act, such as an unlawful act which contains intentional elements, but does not incur a real loss to the victim, then the victim may be given a certain amount of money according to the sense of justice without counting the actual loss.

b. Compensation for compensation.
   Compensatory damages constitute compensation damages which constitute a payment to the victim for the amount of loss which the victim has actually suffered from an act unlawful. Therefore, this compensation is called actual compensation.

c. Compensation punishment.
   Represents a substantial amount of damages in excess of the amount of actual loss. The amount of compensation is intended as a punishment for the perpetrator. This compensatory penalty is appropriate for severe or sadistic intentional cases.  

Notary in a civil suit is often also made or domiciled as the defendant or the main defendant by the other party, who feel that the legal action referred to in the deed is categorized as an act or legal act of Notary or Notary together with other parties also mentioned in the deed.  

UUJN strictly regulate the responsibility of Notary in civil law as regulated in Article 84 UUJN which reads:

"The act of violation committed by Notary to the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51 or Article 52 which resulted in a deed only having the power of proof as a deed under the hand or a deed to be null and void may be the reason for the party suffering loss to claim the cost, compensation, and interest to Notary."

2.2 Accountability of Notary Law in Administrative Deed

The responsibility of Notary is administratively very closely related to the duties and work of Notary. In addition to making an authentic deed, the Notary is also assigned and responsible for registering and authorizing (waarmerken and legalizing) letters/deeds made under the hands. The responsibility of the Notary's administration will arise when the Notary's obligations are not properly observed.\(^\text{14}\)

Administrative accountability for Notary which regulated in UUJN has been determined as follows:

a. Verbal reprimands
   It is the first warning given by the supervisory board to a Notary who violates UUJN who is still in the category of minor violations.

b. Written warning
   It is a follow-up of verbal reprimands if the Notary does not heed the strike,

c. Temporary stop
   This sanction shall be granted to a Notary if the nature of the violation is verified but it may still be considered in respect of its conduct or disregard and not respect the provisions of UUJN or if after receiving sanctions in the form of a severe warning still repeated violations,

d. Dismiss with respect
   Notary terminates or is dismissed from his position with respect according to Article 8 amendment of the UUJN.

e. Dismissal disrespectful
   Notary is dismissed from his position by the Minister upon the proposal of the central supervisory board if violating the provisions of Articles 12 and 13 of the amendment to the UUJN.

Sanctions against a Notary in the form of temporary dismissal from his / her position are intended to prevent Notary from performing his / her duties for a while before sanction in respect of dismissal with respect or dismissal shall be imposed on Notary. The granting of these penalties may terminate in the form of a remedy to a Notary to perform his / her job duties again or be followed up with sanction of dismissal with respect or disrespect discharge. To provide certainty then the temporary dismissal must be determined the time limit, so that the fate of Notary is not hanged.

Administrative sanctions as a preventive measure (supervision) and repressive measures (application of sanctions). The preventive measures are carried out through periodic Notary protocol checks and possible violations in the execution of Notary positions. While repressive measures are carried out through the imposition of sanctions by the regional assembly, in the

\(^{14}\text{Ibid., p. 57.}\)
form of oral warning and written warning and entitled to propose to the central supervisory board of 3 (three) months to 6 (six) months dismissal and dismissive discharge as Notary. The central supervisory board subsequently conducts a temporary suspension entitled to propose to the minister the dismissal of dismissal.

2.3 Accountability of Notary Law in the Criminalization of Deed

Criminal liability in a foreign term is also called a theorekenbaardheid or criminal responsibility which leads to criminal prosecution in order to determine whether a defendant or suspect is held accountable for a criminal act that occurred or not.

In criminal law, the parameters of criminal liability are an error (schuld)\textsuperscript{15}, not in crime if there is no mistake (geen starf zonder schuld). In doctrine, for wrongs one must:

a. The act is unlawful;
b. Be able to take responsibility;
c. The act is done intentionally or negligently and;
d. There is no excuse for forgiveness.

In certain jurisdictions, a Notary in violation may be subject to condemnatory (punitive) punishment or punitive punishment of criminal sanctions in this connection of Law Number 30 Year 2004 as amended by Law no. 2 Year 2014 on Notary's Office does not regulate criminal sanction for Notary in violation of Law Number 30 Year 2004 as amended by Law no. 2 Year 2014 on the position of Notary. In the event of such occurrence, the Notary is subject to a general criminal offense.

The form of responsibility of a Notary in the field of criminal law, such as the practice of justice in general, covers 3 (three) forms of responsibilities, namely:\textsuperscript{16}

a. Responsibility as a suspect, defendant and convicted;
b. Responsibility as witness;
c. Responsibilities as experts in terms of providing explanations and explanations in court.

The formulation of the responsibility of a Notary in violation of statutory regulations is not specifically regulated in the amendment to the UUJN. However, it does not mean that a Notary can not be subject to criminal law sanctions.

In general there are some criminal acts that can be done Notary in running his position, among others as follows:

a. The criminal act of letter fraud as contained in Article 263 paragraph (1), (2) and Article 264, 266 of the Criminal Code;
b. The criminal act of embezzlement as contained in Article 372 of the Criminal Code;
c. The criminal act of fraud as contained in Article 378 of the Criminal Code.

The above-mentioned qualification of the offenses relates to the following aspects:

a. Certainty of day, date, month, year and time of intercepting;
b. Parties (persons) facing Notary;
c. Signature tap;
d. A copy of the deed does not comply with the deed min.

\textsuperscript{15} Amirudin, \textit{Unsur Melawan Hukum (wederechtelijk) dalam Tindak Pidana Korupsi}, Genta Pers, Jogjakarta, p. 18.

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- A copy of the deed exists, without making a deed minus;
- Minuta deed is not signed completely, but minuta deed is issued.\(^{17}\)

Deed which has been made by a Notary if it contains elements in a crime, causing harm suffered to the parties or other parties, and based on sufficient initial evidence, the Notary should be alleged to have committed or participated in conducting or assisting a crime in relation to the authority of Notary pursuant to Article 15 amendment to the UUJN.

Responsibility of Notary, closely related to duties and authority and morality both as a person and as a public official. Notaries may make mistakes or oversight in authentic deed making. This is what happened in the decision of 146 / K / PID / 2015, the defendant who is a Notary has been proven legally and convincingly to commit a letter fraud in the form of an authentic deed. This happens because the defendant only follows the wishes of one of the parties in making the deed, namely the buyer who also becomes the defendant in a separate case. The case started from the sale and purchase agreement of land by way of payment using Transfer form in part and the rest by exchange for the land of the defendant in the separate case.

After the buyer gives the Transfer form to the seller, then the defendant as a Notary makes a deed directly signed by the seller without first reading the contents of the deed which, according to the seller, the deed is the deed of his land swap with the buyer's property, not the deed of the buy and sell deed sell. After the signing, the seller is informed that the land he owns has been sold by the buyer to a third party, based on the sale and purchase deed of sale and the deed of the resell of the seller's signature, while the seller feels still the owner of the land because he has not received the land certificate. become the object of exchange bolstered. So the seller loses his right to two plots of land that became the object of the deed and suffered a loss.

This is a violation of Article 264 of the Criminal Code which reads:

Falsification of letters shall be punishable by imprisonment of up to eight years, when committed against:

a) Authentic deeds
b) Debt or debt certificate of a country or part thereof or of a general institution
c) Seri letters or debentures or certificates of debt from an association, company or airline foundation;
d) Talon, dividend or interest marks of the letters described in 2 and 3 or evidence issued in lieu of those letters;
e) Letters of credit or commercial papers that are subject to release.

The term "counterfeiting" at the beginning of the sentence formulation of paragraph (1) is a criminal act of forgery in general or standard form in Article 263 paragraph (1). The forgery of letters in Article 264 is a lex specialist of counterfeiting Article 263 paragraph (1). Therefore, the term forgeries in Article 264 paragraph (1) contain elements similar to Article 263 paragraph (1). While the basis of criminal liability is placed on the types of letters, which by their nature contain the reasons for the weighting.

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As a lex counterfeit specialist to the truthfulness of the content of special types of letters in Article 264 paragraph (1), there is a stronger / higher legal protection from the letter in general. The ration is that the value of the danger of counterfeiting affecting the legal interest in the truth of the contents of the letters is greater. Because the letters contain public beliefs that are greater / higher in content than regular letters. In those letters have a higher degree of truth than other letters.\(^\text{18}\)

Authentic letters and deeds are 2 (two) different objects in which the letter has a free form while the authentic deed has the form stipulated in law (Law Number 30 Year 2004 regarding Notary Position and Act No. 2 of 2014 on amendment of Law Number 30 Year 2004 regarding Notary Position), so to prove the element of making a false authentic deed or to falsify an authentic deed must refer to the Notary Law of Position as well as to prove the element of mistake in the form of intent must also be proved by sourced from the Act of Position Notary Public. The role of expert witness is absolutely necessary in relation to the position of the notary and the expert witness should be requested from the professional organization or a group of experts who are the Association of Indonesian Notaries.\(^\text{19}\)

Due to the law of a Notary deed containing a false statement therein, if the arguing party can prove it, then the Notarial deed is null and void, while the agreement contained in the deed becomes null and void. There are 3 (three) aspects to watch out for when the deed is created. These aspects relate to the appropriate or non-sequence made by the Notary in the production of an authentic deed, which, when these aspects are breached, shall create different responsibilities of each aspect, which in turn relate to the rate/value of the proof power of the deed, which consists of:

- a. Outward aspect
- b. Formal aspects
- c. Material aspects

III. CONCLUSION

Notary as a public official is responsible for the deed he made. A Notary who in the conduct of his office is proven to have committed a violation, then a Notary must be liable to sanction, in the form of civil sanction, criminal sanction or administrative sanction. These sanctions have been regulated both in UUJN, amendments to UUJN, Civil Code and Criminal Code. Administrative sanctions may include oral reprimands, written warning, dismissal,.dismissal with respect, disrespect dismissal. While for criminal or civil sanction subject to arrangement in KUHPerdatal and Penal Code.


\(^{19}\) http://www.indonesianotarycommunity.com/kategorisasi-kepalsuan-formal-dan-materil-dari-akta-notaris-yang-dikwalifkasikan-sebagai-tindak-pidana/ accessed on March 1, 2018 at 20.30 WITA.
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