VALIDITY OF NOTARY DEED CONTAINING ELEMENTS

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Abstract: This study aims to determine the responsibility of the Notary in the event of making the deed and found the falsity of the contents of the Notary Act according to the Notary Position Law. The theory used is the theory of authority and legal liability theory. This research is normative research. Approach method used is the approach of law, conceptual, and case. Based on the results of a Notary's Research cannot be held criminal liability in case of any loss to one of the parties as a result of false documents from one of the parties, since the Notary only records what is submitted by the parties to be poured into the deed. False statements submitted by the parties shall be the responsibility of the parties. In other words, what can be accounted for by Notary is if the fraud or trickery is sourced from Notary itself.

Keywords: criminal disparity, judge verdict responsibility of Notary, forgery

I. INTRODUCTION

The need for written proofs that will require the importance of this notarial institution. Notary is a legal profession so that the Notary profession is a noble profession (nobile officium). Notary is called a noble official because the notary profession is very closely related to humanity. Deed made by Notary can be the legal basis for the status of property, rights and obligations of a person. The mistake of notary deed may result in the deprivation of a person's right or a person's burden of a liability; therefore the Notary in performing his / her duties must comply with the various provisions of the Notary Law.1

Based on Article 15 paragraph (1), (2), and (3) of Law Number 30 Year 2004 which has been amended by Law Number 2 Year 2014 regarding the Notary's Office mentioned:

1. Notary public is authorized to make an authentic deed of all acts, agreements and statutes required by law and / or as required by interested parties to be declared in an authentic deed, to ensure the certainty of the date of making the deed, to keep the deed, to grant grosses, copy and quotation of deed, as long as the making of such deeds is not assigned or excluded to any other official or other person as defined by law.

2. In addition to the authority referred to in paragraph (1) Notaries are also authorized:
   a. Endorse the signature and specify the date of the letter under the letter by registering in
      a special book;
   b. Record the letters under the hand by registering in a special book;
   c. Making copies of the original letters under the hand of a copy containing the description
      as written and described in the corresponding letter;
   d. To certify a photocopy match with the original letter;
   e. Provide legal counseling in relation to the making of the deed;
   f. Make deed related to land; or
   g. To make a deed of minutes of auction.
3. In addition to the authority referred to in paragraph (1) and paragraph (2), Notary has other
   authority regulated in legislation.

   Based on the above description, it is clear that the importance of the function of the
   Notary Act, therefore, to avoid the illegality of a deed, the notary institution is regulated in
   UUJN.

   Notary's position is very important in helping to create legal certainty and protection for
   the community. Notary in the realm of preventing the occurrence of legal matters through
   the authentic deed he made as the most perfect evidence in court, what happens if the most perfect
   evidence of such credibility is in doubt.²

   Notaries in performing their duties and functions in making certificates outside the
   Notary's office and the accountability of a Notary from a Criminal standpoint contains a vacuum
   of legal norm (wacum of norm) because in UUJN it is not regulated. Notary is an extension of
   State where Notary fulfills state duty in civil law field. In this regard, the state in order to provide
   legal protection in the private sector to a citizen has delegated some of its authority to the Notary
   to create an authentic deed.³

   Notarial Deed is a proof of writing or a letter that is perfect, because notarial deeds have
   3 (three) strengths of proof that is:
   1. The power of outward proof (uitwendige bewijskracht) which is the ability of the deed itself
      to prove its authenticity as an authentic deed.
   2. The force of formal proof (formeale bewijskracht) which provides certainty that such events
      and facts in the deeds are really known and heard by the Notary and explained by the parties
      to the disclosure as stated in the deed pursuant to the procedure specified in the notarial deed
      of Notary.
   3. The power of material proof (materialele bewijskracht) which is a certainty about the matter
      of a deed.⁴

   The juridical fact that shows the void of legal norm (wacum of norm) is found in UUJN
   itself in Article 17 paragraph 1, Article 84 and 85 UUJN Law on Amendment are:
   1. Article 17 paragraph 1 reads: Notary is prohibited:

²Pengurus Pusat Ikatan Notaris Indonesia, 2008, Jati Diri Notaris Indonesia, PT Gramedia Pustaka, Jakarta, p. 7
³Abdul Ghofur Anshori, 2009, Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika, UII Press, Yogyakarta, p. 46
a. Performing a position outside his or her position;
b. Leaving the territory of office more than 7 (seven) consecutive work days without valid reason;
c. Concurrently as a civil servant;
d. Concurrently as a state official;
e. Concurrently as an advocate;
f. Concurrently serving as a leader or an employee of a state-owned enterprise, a regional-owned enterprise or a private business entity;
g. Concurrently acting as Land Acquisition Official and / or Class an Officer outside the Notary's domicile;
h. Become Notary Substitute; or
i. Perform any other work that is contrary to religious norms, morals, or propriety that may affect the honor and dignity of the Notary's office.

2. Article 84, 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 becomes null and void may be the reason for the party who suffers a loss to claim the cost, compensation, and interest to the Notary.

3. Article 85 reads: Violation of provisions as referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and / or Article 63, may be subject to sanctions in the form of:
   a. Verbal reprimands;
b. Written warning;
c. Temporary dismissal;
d. Dismissal with respect; or
e. Dismissal with disrespect.

Based on this background, the Researcher wishes to analyze the responsibility of Notary in the event of making the deed outside the Notary's office and found the falsity of the contents of the Notary Act according to the Notary Position Law.

II. METHOD

This research is a normative research that is law done by reviewing materials derived from various laws and other materials from various literatures. In other words, this study examines library materials or secondary data. Approach method used is the approach of law, conceptual, and case. Types and sources of legal materials used Primary, secondary and tertiary source of legal material. All legal materials obtained were analyzed by descriptive analysis.
III. RESULT AND DISCUSSION

The responsibility of a notary criminal on the deed is not regulated in the Act on the amendment of UUJN but the responsibility of a Notary is criminally levied when a Notary commits a criminal act. The notary concerned cannot be held accountable, since the Notary only records what the parties have submitted to the deed. False statements submitted by the parties shall be the responsibility of the parties. In other words, what can be accounted for by Notary is if the fraud or trickery is sourced from Notary itself. The Law on Amendment of UUJN only provides for sanctions for violations committed by Notaries. Changes to UUJN sanctions may be a deed made by a Notary having no authentic power or only having the power as a deed under the hand. About the act of Notary committing a fraud or falsifying Notarial deed, the Act on Amendment of UUJN does not specifically regulate the criminal provision by because it is based on the principle of legality which is the principles of the Criminal Code that:

1. The State of Indonesia is a State of law based on Pancasila and the Constitution;
2. The State shall guarantee every citizen simultaneously his position in law and government;
3. Every citizen without exception shall uphold law and government.

For the sake of enforcement the law of Notary shall be subject to criminal provisions as stipulated in the Criminal Code, and on the implementation. Whereas a Notary performs an act in his / her capacity of office to distinguish by the act of Notary as a person.

Article 50 of the Criminal Code states: “whoever commits acts to enforce the law shall not be punished”. The understanding of the application of Article 50 of the Criminal Code to the Notary does not merely protect the Notary to acquit the criminal act, but the important thing is whether the act he has committed at the time of the Notarial deed is in accordance with the applicable regulations.

Prove that a Notary has committed a criminal act of falsifying a deed or making a fake deed as intended in Article 2663, Article 264 and Article 266 shall be based on investigation and verification process by searching for the elements of error and deliberate of the Notary itself. It is intended to be accountable both institutionally and in the capacity of Notary as legal subjects.

Under the Law on Amendment of UUJN, it is stipulated that when a Notary in his / her position is proven to be a violation, the Notary may be penalized or sanctioned, in the form of civil sanction, administration and code of ethics, but does not regulate the existence of criminal sanction.

In practice it is found that the violation of the sanction is then qualified as a crime committed by a Notary. The aspects include:

1. Certainty of day, date, month, year and face;
2. The parties (persons) facing the Notary;
3. Signature facing;

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7 M.Yahya Harahap, 2000, Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan), Second edition, Sinar Grafika, Jakarta, p. 36.
4. A copy of the deed does not comply with the deed Minutes;
5. A copy of the deed exists, without making a deed minuta; and
6. Minutes of deed are not signed in full, but minuta deeds are issued.  

The above aspect is closely related to the act of Notary in violation of Article 15 of the Law on Amendment of UUJN, where the estimate is if the Notary does not enforce the provisions of such article will result in the act of falsifying or falsifying deed as intended in Articles 263, 264, and 266 of the Criminal Code causing harm to the interested parties.

A Notary may commit a criminal act of counterfeiting or falsifying in case of a Notary not reading and explaining the deed in the presence of witnesses witnessed by the witness whenever the objective element (element of the nature of the act is illegal in the formal sense). While the criminal act meets the subjective element, which meets the material elements.

Meanwhile, the examination of the violation done by the Notary shall be conducted by a holistic-integral examination by looking at the outward, formal and material aspects of Notarial deed, as well as the execution of duties of Notary office related to the authority of Notary. Thus, in addition to the rule of law governing the act of violation committed Notary also needs to be combined with the reality of Notary practice. Since the examination of a Notary is not appropriate to be done by those who have not studied the Notary's world, meaning that those who will examine the Notary must be able to prove a major mistake made by the Notary intellectually, in this case the logic (legal) power required in examining Notary, not logic power or power.

In general, the act of counterfeiting is a type of violation of 2 (two) norms, namely:
1. Truth (belief) whose offense can belong to a group of fraud crimes;
2. Public order whose violations are classified into criminal groups against the state / public order.  

In the fraudulent acts belonging to a group of fraud criminals when a person gives an illustration of a state of things (c.q. letter) as if the original or true, whereas the authenticity or truth is not possessed. Based on the definition of such counterfeiting in relation to Articles 263, 264, and 266 of the Criminal Code can be explained by the following case cases:

1. Case -I, Article263 paragraph (1) of the Criminal Code: the existence of a Notary makes a deed and has been issued a copy. Then there was a dispute and in the presence of the investigator one of the parties stated that the deed was made by the assistant of Notary. Subsequently by the notary's assistant the deed is brought around to be signed by the parties and when the Notary's assistant does not meet with one of the parties, the deed is abandoned (entrusted) and after the new signing is taken. After the examination by the investigator further it turns out that the ministry of the deed is not present when the copy has been issued and has been signed by the notary in question.
2. Case -II Article 264 paragraph (1) of the Criminal Code: the tap comes to the Notary to make Notarial Deed. And it turns out that the encounter uses the identity of False Identity

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Card (fake ID). Whereas in the notarial deed, the Notary has listed the words “To me Notary public” when the agreement is executed by the parties arising legal problems because the domicile is in the compliance of fulfillment of obligations not in accordance with the ID card so that the concerned cannot find the perpetrator.  

3. Case -III, Article 266 paragraph (1) of the Criminal Code: Attendance comes to Notary to be made Notarial deed, and in fact the information that has been poured into the deed is false or as if the information is in accordance with the truth.

Taking into account the examples of such problems is related to violation of Article 15 of Law on Amendment of UUJN when viewed from the side of the subject (the actor) means that when the act of Notary in making authentic deed does not implement the provision, it is not automatically involved in a criminal act. It should be seen to what extent the involvement of the Notary in depth so as to cause legal problems due to the deed he made. This means that it should look for the elements of mistake and deliberate done by the notary in order to fulfill the criminal element in the Criminal Code.

The Criminal Law is a law that governs what actions are prohibited and that gives a penalty to who interferes with it and regulates how to file cases before the court. In criminal law theory there is a view known as the feitmateriel teaching in terms of determining the existence of mistakes and accountability is done by reviewing whether the author fulfills the entire contents of the formulation of a criminal offense.

Conceptions that place an error as a determinant of criminal responsibility can also be found in the common law system, which implies: “actus nonestreus, nisimens sitrea” which Wilson interprets as: “an act is not criminal in the absence of doubt” said to be criminal if there is no evil will in it. While Kadish and Paulsen interpret as: “an unwarrantable act without avicious willis no crime at all” means a behavior not without the will of evil. On the one hand, this doctrine causes the existence of mensrea is a necessity in a criminal offense while on the other hand it affirms that being able to account for a person for committing a criminal offense is largely determined by the existence of mens rea in that person.

Accordingly, according to the doctrine of the elements of criminal act (offense) consists of the subjective and objective elements. The subjective element is the element that comes from within the abuser, in this case known as the principle “there is no punishment if there is no mistake”. The mistake that is meant here is the mistake caused by the intent that includes:

1. Purpose as the intention is intentional in relation to “intent” is a will and intentional “motive” is a goal.
2. Intentional with convinced certainty that the perpetrator knows for sure or sure that in addition to the consequence, there will be another result. The perpetrator realizes that by doing that, there will be other consequences.
3. A consciousness of conviction of possibility is someone committing an act with the intention of causing a certain effect, but my cameraman is aware that there may be other consequences that are also prohibited and threatened by law.

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The objective element in question is an element that exists beyond the self-perpetrators consisting of:

1. Human actions in the form of: Act, ie active deeds or positive deeds and Omission, namely the act of passive or negative actions, namely the act of silence or let.
2. The consequences of human actions that act is dangerous or destructive and even eliminating the interests preserved by law e.g., object, independence.
3. The circumstances, which are generally, distinguished, among other things, at the time the act is committed, the circumstances after the act is done.
4. The nature of being punishable and the unlawful nature of the nature may be punished with respect to the reasons that relieve my custodian of the punishment. The unlawful nature of the law is that it is against the law, i.e. with regard to prohibitions or orders.

In the event that a Notary is alleged to have committed a criminal act of counterfeiting deed as intended in Articles 263, 264 and 266 of the Criminal Code, it can be described as follows:

1. Article 263KUHP:
   (1) Anyone who makes a false or false letter that may incur any right, contract or debt relief or which is designated as evidence of something in order to serve as proof of something in order to use or order another person use the letter as if its contents are true and not in false, threatened if such use could incur a loss due to counterfeiting of the letter with imprisonment of up to six years.
   (2) Threatened with the same criminal, whoever deliberately uses false or false letters, as if true and not false, if the use of the letter could cause harm.\footnote{Dinas Hukum Polri, 1995, \textit{Penjabaran Unsur Pasal-Pasl Dalam KUHP dan Delik-Delik Lain Di Luar KUHP}, Jakarta, p. 91-92.}

   The elements contained in the provisions of Article 263 paragraph (1) of the Criminal Code are:
   1. The objective element is to make false letters and falsify a letter that can issue a right, issue a treaty, incurring the release of a debt, destined to be a proof of something.
   2. Subjective Elements with a view to using and using the letter as if it were genuine or not fake, the use or use of the letter may cause harm.

   Penalties may be granted under this article, if at the time of falsifying the letter shall be with the intention of using or instructing others to use the letter as if it were genuine and not false. The use of it must be able to bring losses, “can” mean no need to lose it really already exists, and then it is possible that the loss is enough, which means “Losses”. Here not only includes material losses, but also losses in the field of society, morals, and honor.

   The one who can be punished under this Article not only “falsify” the letter in verse (1) but also deliberately uses the false letter of the verse (2) 'Deliberately' means that the person who uses it must know thoroughly that the letter he uses If he does not know about it, he is not
punished, it is considered to be using, for example: to hand over the letter to someone else who
must use it further or submit the letter in the place where the letter should be needed. It must
also be proved, that the person acts as if the letter is genuine and not falsified, so it must be
harmful.

2. Article 264 paragraph (1) of the Criminal Code:
   (1) Counterfeiting of a letter shall be punishable by imprisonment of up to eight years, if
done to: Authentic deeds; debt or debt certificate of any state or part thereof or of a public
institution; sero letters or debts or sero or debt certificates from an association, foundation,
company or airline; talon, dividend or interest marks from one of the letters described in
detail and / or proofs issued in lieu of the letters; letters of credit or commercial papers
intended for distribution.
   (2) Threatened with the same criminal whoever deliberately uses the letter in the first
paragraph whose contents are incorrect or falsified as if true and not falsified, if the use of
the letter could cause harm.

Elements of the article has elements similar to Article263 paragraph (1) of the Criminal
Code, while the difference lies in the object of counterfeiting which in relation with the Notary
is the authentic act of Article 264 paragraph (1) ke1 that the act of falsification is done against
the authentic act. in this article shall contain all the elements or conditions contained in Article
263 and other than that supplemented by the requirement that the forged letter be composed of
authentic letters, which letters are of a general nature and should still gain the confidence of
general. An authentic deed according to that provision shall be made before a public official of
the right, usually a Notary.

2. Article 266 paragraph (1) of the Criminal Code:
   (1) Anyone who orders to include false information in an authentic deed of something that
the truth must be declared by the deed with the intention to use or order another person to
use the deed as if his statement is in accordance with the truth, threatened if such use could
cause harm by a maximum imprisonment of seven years.
   (2) Threatened with criminal punishment, whoever intentionally uses the deed as if its
content is in accordance with the truth if because of such use can cause harm.

The elements contained in the provisions of Article 266 of the Criminal Code include
several elements:
   a. The objective element is to make false letters and falsify a letter that can issue a right, issue
a covenant, incurring the release of a debt, destined to be proof of something.
   b. Subjective Elements with a view to using and using the Letter as if it were genuine or not
false, the use or use of the Letter may cause harm.

According to this Article which may be punishable, for example, a person giving a false
testimony to the Burgerlijke Stand to be incorporated into the birth certificate to be made by the
employee, with the intent to use or order another person to use the deed as if the information
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contained therein is true. The threat of punishment is not only the person who gave the information incorrectly, but also the person who deliberately used the letter (deed) containing the incorrect information. The mention of the successor is proved that the person acts as if the contents of the letter are true and the act can bring harm.\(^\text{12}\)

Based on the aforementioned description, the Notary is allegedly qualified to make a false letter or falsify a letter as if the letter is genuine and not falsified as intended in Article 263 paragraph (1) of the Criminal Code, falsifying the letter, and the forgery has been done in the authentic deed as referred to in Article 264 paragraph (1) to 1 of the Criminal Code, and placing false information in the authentic act as intended in Article 266 paragraph (1) of the Criminal Code is the result of misuse of office for violation of Article 15 of the Law on Amendment of UUJN. Nevertheless does not necessarily result in the Notary conduct the criminal act because it must through the process of substantiation of the subject is whether the subjective element of action against the formal law and the objective element of action against the material law has been proven.

The imposition of a criminal sanction against a Notary can be made to the extent that such limitations are violated, that is, besides fulfilling the formulation of the violation contained in the Law on the Amendment of UUJN and the code of ethics of Notary office must also fulfill the formulation contained in the Criminal Code. If the act of violation or unlawful act committed by Notary fulfills the formulation of a criminal offense, but if it is found under the Act of Amendment of the UUJN a violation. Therefore, the Notary concerned cannot be sentenced to criminal sanction, because the measure to assess a deed must be based on the Law on the Amendment of the UUJN and the code of ethics of Notary's office.

IV. CONCLUSION

A Notary cannot be held liable for liability in the event of a loss to one of the parties as a result of a false document from one of the parties, since the Notary only records what the parties have submitted to the deed. False statements submitted by the parties shall be the responsibility of the parties. In other words, which can be justified to the Notary is if the fraud or trickery is sourced from the Notary itself. Therefore for the sake of enforcement the law of Notary must be subject to criminal provisions as regulated in the Criminal Code, and to its implementation.

The act of Notary in the capacity of his position which is different from the act of Notary as a legal subject (person), then Article 50 of the Criminal Code provides legal protection against Notary, meaning that the application of Article 50 of the Criminal Code to Notaries is not merely to protect Notaries to relieve him of criminal acts, Notary must be assessed from the aspect of ethics and law that is whether its action really refers to applicable law regulation. If the parties feel that the deed created harms him / her because there is an element of forgiveness and deceit, then the parties may request the cancellation of the notarial deed to the Court.

\(^{12}\) R. Soesilo, Opcit, p. 197-198
REFERENCES