

The Legal Protection against the Criminalization of Notary Positions and Land Deed Officials (PPAT)

Irfan¹⁾ & Ahmad Arifullah²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: irfan.mk.n2021@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: achmadarifulloh@unissula.ac.id

Abstract. *It cannot be hidden, the position of the perpetrators of the position of notary public and land deed official (PPAT) is very vulnerable to becoming a "target for shooting" by law enforcement officials. The term that is currently viral is "Criminalization" by unscrupulous officials with various motives. Meanwhile, in work, notaries are always reminded to be professional and comply with the applicable laws and regulations that regulate standard work procedures. This is regulated, mainly in the Notary Office Law, and other regulations, including the Regulations for the position of a land deed official (PPAT). Apart from that, there is also a code of ethics. With regard to the explanation above, the purpose of this study is 1) to find out the form of legal protection against the criminalization of notary/PPAT positions in the city of Semarang, 2) to find out and analyze how to recover the rights and conditions of a notary who is caught in criminalization in carrying out his position in the city of Semarang. The approach method in this research is a sociological juridical approach. The research specifications used are analytical descriptive research. Data types use primary data and secondary data. Data collection using interview and literature study methods. The data analysis method used is qualitative analysis. The results of the study concluded that: 1) by applying the precautionary principle before making a deed, in order to examine all facts related to making a deed with considerations based on statutory regulations. 2) Rehabilitation is a form of eliminating all losses that have been caused by cases that have befallen a notary and is a form of restoring the rights of a notary by clearing the good name, position, dignity and dignity as a public official. If it is related to the case example in Decision Number: 650/Pid.B/2015/PN Dps, the form of compensation can be submitted in pretrial because the indictment does not fulfill the elements of crime of violating a criminal act and the indictment used is a criminal act that is not in accordance with the elements contained in a criminal act but rather a civil act so that this has shown that there has been an error in the application of law.*

Keywords: *Criminalization; Legal; Protection.*

1. Introduction

The presence of a notary plays an important role in creating legal certainty and providing legal protection for the community. The community needs a notary who can be trusted and reliable as well as providing guarantees and acting neutrally without taking sides in making agreements that are expected to provide protection for the parties. The protection provided is also in line with legal objectives, especially by integrating and coordinating several interests in society by regulating the protection and limitations of these various interests. The notary has the authority to draw up a deed whose contents contain formal truths in accordance with what was notified by the appearers to the notary.¹ Regarding the responsibilities of a notary as a public official relating to material truth, it is divided into 4 (four), namely: 1) The responsibility of a notary for the material truth of the deed he made. 2) The responsibility of a notary in civil terms for the material truth in the deed he made. 3) The notary's responsibility based on the Notary's Position Regulations for the material truth in the deed he made.²

Notaries in carrying out their profession have special rules in which they regulate all actions and powers of a notary in carrying out their position, namely Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary or what will be called UUJN and UUJN-P. The definition related to the position of a notary is regulated in UUJN-P Article 1, namely a Notary is a public official who has the authority to make authentic deeds and has other authorities regulated in this Law or based on other Laws. In his position, there is a trait and characteristic that distinguishes him from other positions in society.³

The responsibility of a notary in carrying out his duties is based on the notary's code of ethics.⁴ The authority in making authentic deeds for notaries can only be carried out as long as the making of authentic deeds is not specific to other public officials. One of the main authorities that a notary has as a public official is to make authentic deeds. Notaries in practice are often involved in legal issues, from being a witness in a trial to even becoming a suspect. The notary must be held criminally liable in connection with the deed he made if it causes harm to

¹Ahmad Ramadan, (2022). The Role of the Honorary Council of Notaries in the Confiscation of Deed Minutes by Police Investigators, Sultan Agung Notary Law Review, Volume 4 No. 3,

²Zahren Zukri Alyafie and Amin Purnawan, (2021), Implementation of Notaries' Legal Responsibilities for Authentic Deeds Made According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning Notary Positions in Kendari City, Sultan Agung Notary Law Review (SANLaR), Volume 3 No. 1, p.81.

³Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary

⁴Zahren Zukri Alyafie and Amin Purnawan, 2021, Implementation of Notary Legal Responsibilities for Authentic Deeds Made According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Position of Notary in Kendari City, Sultan Agung Notary Law Review (SANLaR), Volume 3 No. 1, p. 81.

the parties or one of the parties. Meanwhile, on the one hand, a notary cannot be held criminally responsible because the responsibility of a notary is only the formal correctness of the deed he made.⁵

It cannot be hidden, the position of the perpetrators of the position of notary public and officials who make land deeds (PPAT) is very vulnerable to becoming a "target for shooting" by law enforcement officials. The term that is currently viral is "Criminalization" by officials with various motives. Meanwhile, in work, notaries are always reminded to be professional and comply with the applicable laws and regulations that regulate standard work procedures. This is regulated, mainly in the Law on the Position of Notaries, and other regulations, including the regulations on the position of land deed officials (PPAT). Apart from that, there is also a code of ethics.

However, no matter how obedient they are, there are still notaries who are "brought" into the realm of law. I don't know because he really made a mistake, or accidentally, or even actually was not guilty at all and had already carried out the procedure. Until now, news about a notary / official making land deeds (PPAT) who was "examined" meaning brought into the realm of law as a result of carrying out his duties, is happening everywhere. However, after research, the case actually does not need to reach the realm of law. However, it is still processed into the realm of law with various arguments by Law Enforcement.

2. Research Methods

The approach method used in this research is a sociological juridical approach, namely researching and studying law as a study of law in action because it studies and examines the reciprocal relationship between law and other social institutions. "Law in action" legal studies are social studies. non-doctrinal" and empirical in nature.⁶According to Soetandyo Wignjosoebroto, "non-doctrinal" research is research in the form of empirical studies to find theories.theoryregarding the process of occurrence and the process of how law works in society or often referred to as socio-legal research.⁷

3. Results and Discussion

Habib Adjie added that the deed made by a Notary is an authentic deed according to the form and procedure stipulated in the Law of the Republic of Indonesia Number 30 of 2004 which has been amended to Law No. 2 of 2014

⁵Salim HS, (2010), Development of Theory in Legal Science, Rajawali Pers, Jakarta, p.42

⁶Ronny Hanitijo Soemitro, 1988, Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, p. 34

⁷Bambang Sunggono, 2003, Legal Research Methodology, Raja Graphic Persada, Jakarta, p. 42

Concerning the Position of Notary⁸. Provisions regarding deeds are regulated in Article 38 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 which has been amended to become Law No. 2 of 2014 concerning the Office of a Notary which states that each Notary deed consists of the beginning or head of the deed, the body of the deed, and End or closing of the deed.⁹

The concept of legal protection, which is the analytical tool used by the author in solving this problem, functions as a means of protection for legal subjects. The legal subject here is everything that according to law is said to have rights and obligations or act as a supporter of these rights and obligations. The criminalization of notaries has a huge impact on the activities and profession of Notaries, because notaries are public officials who have the authority to make authentic deeds where deeds or agreements made by notaries have a very important role in creating legal certainty because they are the strongest and most complete evidence in cases involving relating to the Notarial Deed.¹⁰

Even though a notary in carrying out his position has applied the principles of honesty, thoroughness, and impartiality, there is still the possibility of falsified documents and fictitious statements made by the parties which can still harm a notary, and even become a loophole for a notary to be judged. When a dispute occurs, a notary will definitely be summoned and asked for information regarding the deed he made as a witness which will cause loss of material and also time for a notary. In connection with summoning a Notary, it has been regulated in Article 66 UUJN, namely regarding the procedures for summoning a Notary must go through the Notary Honorary Council. The summons through the Notary Honorary Council is related to the obligation of a Notary to keep everything related to the deed he or she makes confidential. The function of the MKN as written in the UUJN is to specifically provide legal protection for notaries which in the previous UUJN had been removed. 16 So that in holding the professional oath of office of a Notary and the Notary's Code of Ethics, in Article 66 of the UUJN law enforcers only have the right to take photocopies of the minutes of the deed as well as other documents attached to the minutes of the deed.¹¹

In carrying out the duties and obligations of a notary, he must be based on UUJN and the Notary Code of Ethics so as to prevent collisions between one regulation and another, because in carrying out his office a Notary often collides and

⁸Habib Adjie, Indonesian Notary Law; Thematic Interpretation of Law no. 30 of 2004 concerning the Position of Notary. PT Refika Aditama, Bandung, 2008, p. 206.

⁹Herlien Budiono, Basic Techniques for Making Notarial Deeds, PT Citra Aditya Bakti, Bandung, 2013, p. 13

¹⁰Soerjono Soekanto, 1981. Criminology: An Introduction, First Printing, Jakarta: Ghalia Indonesia, Jakarta Page 62

¹¹Heriyanti, Legal Protection for Notaries Who Are Indicted for the Crime of Making Authentic Deeds. Yustisia Journal 5(1). DOIs:<https://doi.org/10.20961/yustisia.v5i2.8748>

conflicts with law enforcers. It is not uncommon for a Notary to encounter problems in implementing legal norms used by law enforcers by filling in legal gaps. So in the form of protection against crimes that can plunge notaries into legal problems, there is a principle called the principle of Legal Presumption or *Vermoeden Van Rechmatigheid*, namely that a notarial deed will always be considered valid and has perfect and full evidentiary value, before any party can prove it.¹²

The UUJN does not regulate the procedures for restoring a Notary's rights after a period of detention in court proceedings resulting from a case. UUJN only provides for the application of Civil and Administrative sanctions in UUJN which can be seen in the provisions of Article 84 UUJN and Article 85 UUJN. The application of these sanctions is not balanced with the restoration of the Notary's rights after being hit by legal sanctions and in particular the restoration of the Notary's rights after a period of detention in court proceedings.¹³

By not regulating the recovery of the rights of a Notary after a period of detention in the court decision process in the UUJN provisions, it forms a void of norms. The void of norms (*leemten van normen*) is an illustration of a situation where there is no legal rule governing a certain situation. In determining how to measure the void of norms, it is done when there are no legal norms governing a concrete event and the legal norms already exist, but are unable to reach the material needed to regulate them. So that in order to fill the void in these norms, it is necessary to establish new legal norms which later the newly formed legal norms will become the envisioned law and will apply in the future (*ius constituendum*).¹⁴

Criminalization is an object of study in substantive criminal law which discusses the determination of an act as a criminal act (criminal act or crime) which is threatened with certain criminal sanctions. Disgraceful acts that were not previously qualified as prohibited acts are justified as criminal acts that are punishable by criminal sanctions. According to Soerjono Soekanto, criminalization is an action or determination by the authorities regarding certain acts which are considered by society or groups of society as acts that can be punished as criminal acts¹ or make an act into a criminal act and therefore can be punished by the government by working on his name. The rise in criminalization of notaries means that we must take a stand regarding forms of prevention and also legal protection related to the criminalization of notary positions, considering that

¹²Interview with Muhammad Hafidh, chairman of Pengda INI Semarang City, June 17 2023

¹³Habib Adje, Covernote of Never-Ending Conversations, <https://youtu.be/QwSwk48sTcc>

¹⁴Afriana, A. (2020). Position and Responsibilities of Notaries as Parties in Settlement of Civil Disputes in Indonesia Regarding the Deeds They Make. Journal of Padjadjaran Law Axis, 1(2), 246-261. DOIs: <https://doi.org/10.23920/jphp.v1i2.250>

notaries are positions of trust in their profession, so they must maintain public trust in using notary services.¹⁵

Law as a norm is a guide for humans to behave in their relationships in society. The law is also a guide for what to do and what not to do. The law also provides instructions on which things are not allowed, so that everything can run in an orderly and orderly manner. This is possible because the law has the nature and time to regulate human behavior and has the characteristics of ordering and prohibiting as well as the law being able to force that law to be obeyed by members of society.

By using the theory of legal protection put forward by Immanuel Kant who argues that law is the protection of human rights and freedom of citizens. Legal protection theory according to Fitzgerald, has the aim of protecting certain interests and this can only be done by limiting the various interests of other parties.

From the explanation of the theory above, the writer concludes that One form of notary criminalization is to apply the precautionary principle before making a deed, so that it examines all facts related to making a deed with considerations based on statutory regulations. The notary must examine all the validity of the evidence or the completeness of the supporting documents shown by the parties to the notary, and also hear the statements and statements of the appearers as a basis for consideration in confirming the wishes of the appearers in the deed. The notarial deed must provide certainty regarding an event or fact in the deed which also contains the statements of the appearers at the time contained in the deed in line with the proper procedure for making the deed¹⁶.

Restoration of the rights of a notary is a form of returning all forms of rights in terms of ability, position and dignity. In general, the form of restoration of rights after a court decision can be seen in the provisions of Law No. 8 of 1981 concerning Criminal Procedure Code (KUHP). In the general provisions of point 3 letter (d) the Criminal Procedure Code stipulates that anyone who has experienced the process of being arrested, prosecuted or tried for reasons contrary to the law, causing a mistake in the application of the law applied in a criminal case, is required to provide compensation and rehabilitation. Compensation and rehabilitation are given when law enforcement officials have been negligent or intentionally cause violations of legal principles, thereby causing criminal charges or being subject to administrative law. Meanwhile, according to the provisions of Article 9 paragraph (1) of Law No. 48 of 2009

¹⁵Op cit. p.31

¹⁶Interview with Muhammad Hafidh, chairman of the INI regional government, Semarang city, June 17 2023.

concerning Judicial Power, compensation and rehabilitation can occur if there is a mistake or the application of the law against someone which causes that person to be detained, prosecuted or tried.¹⁷

The definition of compensation can be seen in the provisions of Article 1 number 22 of the Criminal Procedure Code which determines that compensation is the right given to a person to receive a sum of money as a result of an error regarding the arrest, detention or prosecution of a person or an error regarding the application of the law based on the law. Claims for compensation can be examined and decided in a pre-trial hearing using the same judge involved in the previous criminal case. Claims for compensation can be made by the defendant if an arrest is illegal, a detention is illegal according to law, there is an action that is illegal according to law, the demands are not in accordance with the law and the termination of the investigation. According to M. Yahya Harahap, dividing several classifications regarding compensation related to prosecution and being tried without statutory reasons, namely not fulfilling the elements of the indictment causing the indictment to become null and void, not accepting the Prosecutor's indictment, insufficient evidence to fulfill the indictment, the indictment is not classified as a crime or violation, there is a mistake regarding the person and the indictment is not in accordance with the actions taken¹⁵ Payment of compensation can be given by the Minister of Finance on condition that the results of the decision stipulated by the head of the court are attached.¹⁸

Based on the explanation above, the form of recovery of the notary's rights after the occurrence of a court decision according to the Criminal Procedure Code is that the notary is required to receive compensation and rehabilitation. Compensation can be filed in pretrial due to the non-compliance of the elements charged, the prosecutor's indictment not being accepted, the evidence being insufficient to fulfill the indictment, the indictment not belonging to a crime/violation, there was a mistake regarding the perpetrator and the indictment is not in accordance with the actions taken. Meanwhile, rehabilitation can be carried out to a notary if the notary is declared free from all charges and has permanent legal force.¹⁹

Rehabilitation is a form of eliminating all losses that have been caused by cases that have befallen notaries and is a form of restoring notary rights by clearing their good name, position, honour and dignity as a public official. If related to the case example in Decision Number: 650/Pid.B/2015/PN Dps, the form of

¹⁷Article 9 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power.

¹⁸Heriyanti, Legal Protection for Notaries Who Are Indicted for the Crime of Making Authentic Deeds. *Yustisia Journal* 5(1). DOIs:<https://doi.org/10.20961/yustisia.v5i2.8748>

¹⁹Afriana, A. (2020). Position and Responsibilities of Notaries as Parties in Settlement of Civil Disputes in Indonesia Regarding the Deeds They Make. *Journal of Padjadjaran Law Axis*, 1(2), 246-261. DOI<https://doi.org/10.23920/jphp.v1i2.250>

compensation can be submitted in pre-trial because the indictment does not meet the elements of a criminal offense and the indictment used is a criminal offense that is not in accordance with elements contained in a criminal act, but it is a civil act so that this shows that there has been an error in the application of the law. Meanwhile, the form of rehabilitation is in accordance with the court decision, namely restoring rights, position,²⁰

4. Conclusion

A form of legal protection against the criminalization of notary positions is to apply the principle of caution before making a deed, in order to examine all facts related to making the deed with considerations based on statutory regulations. The notary must examine all the validity of the evidence or completeness of the supporting documents shown by the parties to the notary, and also listen to the statements and statements of the presenter as a basis for consideration in consolidating the wishes of the presenter into the deed. Rehabilitation is a form of eliminating all losses that have been caused by cases that have befallen notaries and is a form of restoring notary rights by clearing their good name, position, honour and dignity as a public official. If it is related to the case example in Decision Number: 650/Pid.B/2015/PN Dps, the form of compensation can be submitted in pretrial because the indictment does not fulfill the elements of crime of violating a criminal act and the indictment used is a criminal act that is not in accordance with the elements contained in a criminal act but rather a civil act so that this has shown that there has been an error in the application of law. While the form of rehabilitation is in accordance with the court's decision, which is to restore the rights, position, dignity and status of the notary himself. a form of compensation can be proposed in pre-trial because the indictment does not fulfill the elements of a crime of violation of a criminal act and the indictment used is a criminal act that does not correspond to the elements contained in a criminal act but is instead a civil act so that this shows that a mistake has occurred.

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²⁰Gomies, FR (2020). Notary in Convict Status Who is Still Carrying Out His Position. ARGUMENTUM Master of Law Journal, 7(1), <https://doi.org/10.24123/argu.v7i1.3009> p. 16

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