

## **Roles and Responsibilities of Notary in Making the Results Agreement of Criminal Sanctions**

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Abstract. Notary institutions emerge from the growing needs of society today. Which requires evidence of the relationship existing civil law and / or between them, the general rule as to where and when the law demands it or it is desired by the community, to make written evidence that has authentic power. On 16 June 1925, out instructions to the Notary who practice in Indonesia, instruction, which contains 10 articles containing provisions that a Public notary before the first practice was sworn in. Notary Oath become a necessity of Principles of Public Law (Publiek Rechtelijk Beginsel): "That a public official before running its position as legally must take the oath first, if not it is not legitimate to run its position despite being lifted. "Oath Notary at Notary Act No. 2 of 2014 provided for in Article 4 to Article 7, while Article 17 Regulation of the contents oath Notary amended by Regulation No. 11 of 1949 has been repealed with the enactment UUJN. In the UUJN article 1, paragraph 1 Notary is a public official authorized to make an authentic agreement and other authorities referred to in this Act. Agreement of Notary must have the strength of evidence was authentic anyway, because according to article 1870 of the Civil Code authentic agreement must give them the parties and their heirs or persons who have the right of them a perfect evidence about what is contained in the agreement that the force formal and substantive evidence.

Keywords: *History of Notaries; Notary Oath; Criminal Sanctions.*

### **1. Introduction**

Unitary Republic of Indonesia as a state law based on Pancasila and the Constitution of 1945 (UUD 1945) to ensure certainty, order (benefit) and justice as legal protection in public their writing as a form of agreements and legal provisions which have the strength of evidence of the strongest and fullest. One article that has the strength of evidence is the fullest Notary agreement. Notary agreement is an authentic agreement because made in the form and determined by the Act, made by or in the presence of officials in power commonly for it in the place where the agreement was in her.

Notaries are needed in a thriving community today. Due to growing public life requires legal certainty in the sector of public services. One of the jobs that offer services in the field of civil law is particularly law Notary.

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The role of the Notary, it can be said as a seller of services that have a respectable position in society. Services can be regarded as a process, or businesses that generally based on agreement of both parties (ie providers and service recipients) to achieve certain goals. Notary in implementing the required its position on professional department, is seen in his duties notary should not benefit one party In other words, a notary must show it is neutral to the parties even though he requested legal assistance by one of the parties.

Notary is a public official who has the authority to make the authentic act on all agreements and determination required by a general rule and / or by an interest to be stated in an authentic agreement, ensure certainty the date, save the agreements and give grosse (valid copy) , copies and excerpts and agreement all along it by a general rule not also be assigned or excluded to the officer or others.<sup>4</sup>

Notary in performing its duties based on the laws and regulations that are often called Law Notary (UUJN) No. 30 of 2004 amended by Act No. 2 of 2014. In the provisions of Rule Notary and Notary Act (UUJN) the basically stated that the main task of a notary is to make the agreements authentic. Article 1870 of the Civil Code is said that an authentic act provides a perfect evidence about what is contained therein. Thus, the importance of the notary office is the notary authority granted by law to make a device or tool that perfect proof and therefore authentic act is in essence rated correctly.

The mistake on the notary agreement made can lead to dispossession of one's rights or depressed by someone of an obligation, therefore, a notary in the running of their office must comply with the various provisions in the Law Position notary.<sup>5</sup>

An agreement is said to be authentic if made before a competent authority. If the agreement of Notary then the agreement is said as a notarial agreement or authentic agreement or agreement of Notary.<sup>6</sup>

Notaries can be justified legally and morally because of agreement made would be the state archives and the evidence for the parties who asked for legal assistance to the Notary. In addition, a notary in implementing his job also get honorarium, but did not rule out the possibility that the Notary also receive less capable in terms of making the notarial agreement can be given easy. This is what distinguishes the others that Notary profession is a profession that is fully responsible for the work he does.

## **Research Methods**

Legal research is a process to find or develop Legislation, Principles of Law, Trial Judgment, Customary Law and the Law of living in the community. Legal research conducted to produce arguments, the development of science progress law as prescription resolve the problem.

Research methods used in this research is normative juridical research method is the use Legal Research secondary virgin resources such as data obtained through library

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<sup>4</sup> Indonesia, Law on Notary, Law No. 2 of 2014, Ed. 1 On Notary

<sup>5</sup>Abdul Ghofur Anshori, 2009, Lembaga Kenotariatan Indonesia, *Perspektif Hukum dan Etika*, UII Press, Yogyakarta, p. 46

<sup>6</sup>A. Kohar, 1983, *Notaris Dalam Praktek Hukum, Alumni*, Bandung, p. 64

materials closer look into the sources of the existing literature relation to the title of this research. This research includes the study of the principles of law, sources of law, legal theory, books and legislation scientific theoretical and can analyze problems of this research.<sup>7</sup>

In this normative juridical research usually studied only material library books which may include methods of primary data, secondary data method and the tertiary data method<sup>8</sup>, include: Methods of primary data include: the 1945 Constitution, the Koran, the Islamic Law Compilation, UUJN No. 2 of 2014, the Civil Code, the Criminal Code, Notary Code; Methods of secondary data include: Books literature, Journal of Law and Law Magazine, Papers, results of seminars, magazines and newspapers, research, scientific articles and dissertations, Opinions legal practitioners, variety of books that are relevant to notaries code of professional conduct and Tertiary Data Method: Law Dictionary, Dictionary of Islamic law.

## **2. Results And Discussion**

### **2.1. Agreements Which May Be Carried Out By Notary In Making The Results Agreement Of Criminal Sanctions**

Act no. 2 of 2014 concerning Notary does not contain a provision Criminal for Notaries, but does not require the possibility of a Notary in their profession can not be separated from the sanctions Criminal Notary in their profession is not infrequently invoked by the law enforcement police as a suspect in connection with the authentic agreement that made.

The Notary criminal elements in running its job include:

- Falsification of documents or letters  
Counterfeiting authentic agreement made by Notary is the sound of article 263 of the Criminal Code on forgery suppose Tax on Acquisition of Land and Building (BPHTB), Tax Payment (SSP), Slip Bea (SSB). In general, can not be applied to the perpetrators of the notaries who falsify an authentic agreement. However, the notary may sanction of Article 264 paragraph (1) and (2) (Penal Code) Article 264 of the Criminal Code because it is a forgery aggravated forgery because the object contains a high trust value. While the sound of article 266 of the Criminal Code can be applied to the perpetrators who ordered the notary an agreement with false information, because legally commit criminal offenses.
- Embezzlement  
Article 372 the crime of embezzlement is a person who deliberately and unlawfully possession of and something that is wholly or partly belonged to someone else, but it is in his power not because of a crime punishable for embezzlement, while the elements of Article 372 as follows:

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<sup>7</sup>Soerjono Soekanto Dan Sri Mamuji, 2010, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Press, Jakarta, p.13

<sup>8</sup> Soerjono Soekanto, *Ibid*, p.52

"Deliberately (subjective element), whoever, master unlawfully, an object, in part or whole, is to him not because of crime (the objective element). As an example of a Notary / PPAT darken Tax on Acquisition of Land and Building (BBHTB) paid by the client".

Article 374 of the Criminal Code: "Embezzlement committed by people who mastered on goods because there are employment or for searching or as a reward for it, shall be punishable by a maximum of 5 years."

Money laundering (criminal act) Act No. 8 of 2010 on the prevention and combating of money laundering (AML).

Usually the mode, owner of the money to buy shares and then recorded in a notarial agreement, stock purchase mode is easier for money launderers to move money, when it is in the form of shares, then the proceeds of crime into legitimate, so that it becomes easy to move as you wish offender.

Terms of criminalization in general, ie the victims, criminalization is not solely intended for retaliation, should be based on the principle of ratio-prinsip, their social arrangements.

## **2.2. Giving False Testimony Under Oath**

In the regulation of Article 242 the Code of Penal paragraphs 1 and 2, which reads:

Paragraph 1

"whoever in a state where the law determines the order to testify on oath or having legal effect to the information thus, intentionally member perjury over oath, either verbally or in writing, in person or by proxy specifically designated for it, threatened the longest criminal go years."

Paragraph 2

"if a false statement on oath given in criminal cases and detrimental to the defendant or suspect is guilty punishable by a maximum imprisonment of seven years."

There are five (5) the rules of Islamic law is universally covers:

- 1) Philosophical approach (principle of fairness)
- 2) The sociological approach (principle of utility)
- 3) Judicial approach (principle of legal certainty)
- 4) Balance approach
- 5) Approach ease

There are (four) Principles of Notary include:

- 1) Principle of legality
- 2) The principle of balance between rights and obligations
- 3) Principles of good will in any case
- 4) The principle of openness to build public trust with perfect

### 3. Closing

#### 3.1. Conclusion

- Article 4 UUJN explained that: "Before running its position, Notary shall take an oath / pledge according to his belief in the presence of the Minister or the designated officer. Oath / pledge that reads as follows, "I swear / promise";
  - That I will be obedient and faithful to the Republic of Indonesia, Pancasila and the Constitution of the Republic of Indonesia in 1945, Law on Notary and other legislation
  - That I will perform my tenure with trustful, honest, thoroughly, independently and impartially
  - That I will keep my behavior and attitude will do my obligations in accordance with the code of ethics, honor, dignity, and my responsibility as a Notary
  - That I will keep secret the contents of the agreement and the information obtained in the execution of my office
  - That I was to be appointed in this position either directly or indirectly by any reasons, do not and will not give or promising anything to anyone.
- From chapter 4 UUJN over clear that the notary must be honest carefully and impartially, when officials Notary break a promise / oath swore then Notary biased in Stop or with respect.
- If the alleged violation of law as a crime committed by a notary, then the sanction imposed is the sanction set out UUJN, in this case the threat of sanctions as stipulated in the Criminal Code or the Act on the outside of the Penal Code which is categorized as a specific criminal offense. If the Notaries obviously do Crime of Forgery letter or document, Fraud, Money Laundering and Providing False Information under oath then officials could Notary dishonorably discharged punished because the judge's ruling has permanent legal force.<sup>9</sup> Sanctions as a form of responsibility that can be given to the notary officials, may be administrative sanctions, civil or criminal sanctions.

#### 3.2. Suggestion

1. For Notary, the Notary candidates in the running Notary office always obedient to the office of the Notary Act and other legislation
2. Is independent, opinionated fixed, not easily influenced by others or other things, a principle in order to prevent crime, unlawful
3. Notary must have a precautionary principle in making an agreement formal scrutinize the data that will be made the basis of an agreement.

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<sup>9</sup> Ngadino, 2017, *Diklat Mata Kuliah UUJN, Unissula, Semarang*, p.16

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