

The Views of the Law on Notary Positions & the Criminal Code regarding the Liability of Notaries Using Fake Documents in Making Bank Credit Agreement Deeds

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Abstract. *Notaries in carrying out their duties and positions when making authentic deeds are required to be more careful and implement the principle of prudence, considering that legal problems related to authentic deeds often occur, namely that there are parties who commit crimes such as providing fake identities and documents in making authentic deeds which result in Notaries got into legal trouble over the deed he made. This research raises the issue of the Notary's responsibilities in making credit agreement deeds made using fake letters. To answer this problem, this research uses a normative juridical approach and uses descriptive data analysis methods using a qualitative approach. The results of this research are that the Notary's responsibility for the credit agreement deed made using a fake document cannot be borne by the Notary because basically the Notary is only responsible for formal truth in making an authentic deed, while proving material truth is the task of the Police and Prosecutor's Office. to seek material truth in the trial. A notary can be charged with criminal liability if he or she is negligent in carrying out the duties that are his or her responsibility as a public official in making authentic deeds as specified in the Notary Position Law (UUJN) and other applicable laws.*

Keywords: *Credit; Document; False; Validity.*

1. INTRODUCTION

Banks in carrying out other activities such as providing credit will provide requirements to their customers, this is regulated in the Banking Law regarding the basic provisions which are credit guidelines which must be owned and implemented by banks in providing credit to their customers, so that customers or prospective debtors must fulfill all requirements set by the bank. One of the requirements if the credit request is declared accepted by the bank is that it must produce written evidence in the form of a credit agreement deed made before a Notary between the customer (potential debtor) and the bank. However, when making a credit agreement deed, you are not required to use a notary's deed or an authentic deed, because the credit agreement deed can be made in the form of a private deed, namely a deed made by the bank and its customer without requiring/involving a public official, in this case a notary.¹

¹H. Budi Untung, (2000), *Kredit Perbankan di Indonesia*, Bandung: CitraAditya Bakti, p. 51.

The development of a very advanced era demands the need for legal certainty through the creation of authentic deeds as strong evidence. Therefore, in terms of making a credit agreement deed, banks usually always use the role of a Notary in making a credit agreement deed, especially in credit agreements where the loan nominal is quite large. This aims to provide legal certainty to the parties and provide guidelines for the bank to pay more attention. and apply the precautionary principle.

The credit agreement deed must be able to accommodate all the wishes of the parties, the credit agreement deed is a deed of the parties (*partij deed*), the authentic deed itself consists of 2 types of deeds, namely²Official Deed (*akta relaas*), official deed is a deed made by a Notary and Deed of Parties (*partij deed*), deed of parties is a deed made before a Notary. The parties' deed (*partij deed*) provides authority.³ In order for the parties to be able to determine freely whatever they want, these wishes must be included by the Notary in the deed he or she makes as long as the wishes of the parties do not conflict with existing laws and regulations, public order, and harm other parties. In making an authentic deed, in this case a credit agreement deed, the Notary must fulfill the requirements determined by the Law on the Position of Notaries (UUJN) or related regulations, namely made by an authorized official, in a standard form that has been regulated in the Law and made in the area of the Notary where the deed was made.

Making a credit agreement deed must fulfill the material and formal requirements in making an authentic deed, this is so that the credit agreement deed made by a Notary has the power of proof as an authentic deed. Notaries as public officials in making authentic deeds must be careful and apply the principle of caution considering that in the era of sophisticated globalization like now, there are many things that prospective debtors do to deceive banks and even Notaries, this is proven by the many cases of forgery of documents. and identity which is a material requirement in making an authentic deed. Even though in the case of making a credit agreement deed, the entire case is not entirely the fault of the Notary, but criminal cases related to notarial deeds can bring the Notary into the realm of law to be held accountable for the deed he made as a suspect or only as a witness. This is a consequence. from the work of a Notary as a public official in charge of making authentic deeds⁴.

Cases of falsifying documents or identities in making credit agreement deeds often occur, in this case the making of credit agreement deeds made by the bank and the debtor turned out to be using fake documents and identities, the falsification was carried out by the debtor which had been planned by the debtor and his friends. to trick the bank to get a credit loan⁵. The use of fake documents and identities was only discovered when the debtor did not carry out his obligations, namely did not pay the credit installments as agreed. The bank does not know if the documents used are fake documents and identities, even though the bank has carried out a survey in the field to check the veracity of the documents provided as a condition for granting credit. Apart

²G.H.S. Lumban Tobing, (2005), *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p.52.

³Fahmi, Idris Aly. "Analisis Yuridis Degradasi Kekuatan Pembuktian dan Pembatalan Akta Notaris Menurut Pasal 84 Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris." *Arena Hukum* Volume 6, No 2 (August 2013). p. 152- 289.

⁴ Hendra, Rahmad. "Tanggungjawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru". *Jurnal Ilmu Hukum* Vol. 3 No. 1 (2013).

⁵Ibid.

from that, based on the Notary's statement, the Notary also does not know if the documents provided by the person present are documents. and fake identities. In this case, the making of the credit agreement deed was based on the Notary's trust in the bank because the bank had conducted a survey and was a party that quite often collaborated with the Notary so that the Notary did not ask the parties for any other identity other than the Identity Card (KTP).⁶

The case above caused the bank to suffer losses, therefore the bank brought this case to the legal realm. Making a credit agreement deed made based on fake letters and documents is a violation of the material requirements for making an authentic deed. In terms of proving the material truth in making a credit agreement deed, who actually has the responsibility to check the veracity of the documents and the identity of the facer, and what responsibilities can be imposed on a Notary as a public official who is authorized to make authentic deeds⁷.

2. RESEARCH METHODS

"The problem approach used in this research is a normative juridical approach, namely legal research carried out by conducting searches on regulations and literature related to the problem being studied." Or it can also be interpreted as legal research which places law as a building system of norms. The norm system in question is a system of norms, principles, rules from laws and regulations, court decisions, and agreements and doctrines (teachings).

3. RESULTS AND DISCUSSION

The requirements for the validity of an authentic deed are divided into two, namely formal requirements and material requirements. These conditions are cumulative, not alternative. This means that if even one of these conditions is not fulfilled, it will result in the relevant authentic deed containing legal defects and will result in the deed becoming invalid as an authentic deed, and not having perfect evidentiary value to be used as a evidence to prove the disputed case.

According to law, both the Civil Code and the Law on Notary Positions (UUJN)⁸In making an authentic deed, it must be made by or in the presence of a public official who is authorized to do so. The authorized public official in this case consists of a Notary or other official who, based on the law, has authority in this matter, such as a Land Deed Drafting Officer (PPAT). If an authentic deed is made in the presence of an official who is not authorized, then according to Article 1869 of the Civil Code the deed will be degraded to a private deed. However, the provisions of Article 1869 of the Civil Code do not apply to deeds which are specifically made in the presence of certain officials. For example, a marriage certificate is not made in the presence of a marriage

⁶Mukti Fajar, *et.al.* (2010), *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta: Pelajar Yogya, p. 34.

⁷Sukisno, Djoko. "Pengambilan Fotokopi Minuta Akta dan Pemanggilan Notaris." *Mimbar Hukum* Vol. 20 No. 1 (2008). p.30-52 see Backhaus, L., & Vogel, R. Leadership in the public sector: A meta-analysis of styles, outcomes, contexts, and methods. *Public Administration Review*, 82(6), (2022): 986-1003. <https://doi.org/10.1111/puar.13516>

⁸Notary Position Law, Law No.30 of 2004, LN No. 117, TLN No. 4432, as amended by Law no. 2 of 2014, LN No. 117, TLN No. 5491. Article 39 paragraph (2)

registrar. In the case of making an authentic deed, it must be done in the presence of an authorized official, which is a formal requirement that is imperative⁹.

An authentic deed which is a deed of the parties (*partij*) must contain the information desired by the parties, but this information must be mutually compatible between both parties. This is used as a basis that can give birth to an agreement. Because the parties are obliged to come when the authentic deed is made, even though the parties can be represented by someone appointed by the parties to represent them by making a power of attorney so that the person who comes is not the party concerned, there is still a representative who is valid according to law. The aim is for the Notary or PPAT to be aware of any disagreement between the parties. Apart from that, there is a requirement that the parties must be present when making an authentic deed because the presenters must be known or if the presenters are not known to the Notary/authorized official, the parties must be introduced to the Notary/authorized official by two witnesses.¹⁰.

Both parties are known or introduced to the official concerned. When making an authentic deed, at the beginning of the deed/end of the authentic deed there must be a statement from the official who made the deed that the parties are known to the official who made the deed or can be introduced to him by 2 witnesses. These witnesses are usually employees of the deed-making official themselves or are introduced by people who know the witnesses. This is in line with Article 39 paragraph (2) UUJN which states that "persons who wish to have a deed drawn up must be known or introduced to the Notary by two witnesses who meet the requirements."

The next requirement for making an authentic deed is to be attended by at least two witnesses. The aim of these witnesses is to act as a witness to the truth of making the deed in the presence of the relevant official. Usually those who act as witnesses are employees who work in the office of the official who made the deed. If this requirement is not respected in making an authentic deed then the authentic deed is said to not fulfill the formal requirements in making an authentic deed, therefore the deed becomes invalid as an authentic deed and is only a private deed. This condition is also strictly regulated in the UUJN, namely in Article 40 paragraph (1). However, without reducing these provisions, there are other requirements regarding who can be a witness in making an authentic deed which is regulated in Article 40 paragraph (2) UUJN, namely "the making of an authentic deed is not permitted. Witnesses are taken from the family by blood and marriage up to the third degree of Notary. and the faces." If the person acting as a witness is a person who does not meet the requirements as regulated in Article 40 paragraph (2) UUJN, then the deed is not valid as an authentic deed, but only has value as a private deed.

In every authentic deed, at the beginning of the deed, the identity and position of the Notary must be stated¹¹, in the body of the deed the complete identity of the parties

⁹ Andersen, L. B., Pallesen, T., & Pedersen, L. H. Does ownership matter? Public service motivation among physiotherapists in the private and public sectors in Denmark. *Review of Public Personnel Administration*, 31(1), (2011): 10–27. <https://doi.org/10.1177/0734371X10394402>

¹⁰Ibid.

¹¹ Sari, Anita Ratna (2020) "TANGGUNG JAWAB NOTARIS DALAM PEMBUATAN AKTA PERJANJIAN KREDIT DENGAN MENGGUNAKAN SURAT PALSU (STUDI KASUS PUTUSAN

must be stated and at the end of the deed the complete identity of the person who was a witness in the preparation of the deed must be stated. The complete identity referred to is including the full name, place and date of birth, occupation, position, position and residence in accordance with the identity given to the Notary.

In Article 38 paragraph (2) letter c UUJN regulates the provisions of these conditions. These conditions are written and found at the beginning of the deed or head of the deed. The first part/head of the deed must state the name of the place where the deed was made and the day, month and year it was made. This must be stated in the deed so that you know when the deed was made.

Other formal requirements that must be fulfilled in making an authentic deed are regulated in Article 40 paragraph (1) UUJN. This article emphasizes that the Notary is obliged to read the deed in front of the audience and witnesses. If one or more of the presenters does not understand the language used in the deed, it can be translated by a Notary, but if the Notary himself cannot translate it, then the deed will be translated by an official translator who has been appointed. In the event that the parties wish not to have it read, the Notary is still obliged to read the important parts of the deed, by stating at the end of the deed the reasons why the deed was not read in its entirety.¹²

At the end of the deed, the parties, witnesses and the official who made it are obliged to put their signature at the end of the deed as proof of the agreement of the parties that the deed was made by them, and for the witnesses the signing at the end of the deed aims to signify their testimony if It is true that the deed was made in accordance with procedures in accordance with the provisions of the Law. An additional thing that must be fulfilled is to put a fingerprint on a separate sheet of the deed.

The contents of the agreement in the deed are information regarding matters that have been mutually agreed upon by the parties. In principle, the Notary is only a writer who states what the parties want and cannot reduce, add to, or exceed what was agreed upon by the parties. Even though in a deed, the Notary is only tasked with writing down what the parties want, if the information desired by the parties is contrary to law and public order, the Notary can limit the parties' wishes. Because if a notarial deed contains content that is contrary to law and public order, then the deed does not have the power of an authentic deed.

A deed that contains information outside of a legal act or legal relationship, but does not fulfill the material requirements, then the deed has no evidentiary power. A deed that does not contain information about actions or legal relationships is not a deed in the sense of proof, because according to law the function of a deed is to prove actions or legal relationships that occurred between the parties who made it.

In making an authentic deed, the parties aim to make the authentic deed into evidence of a legal action that the parties will carry out. Basically, the parties who come before an official to make a deed with the intention of making a deed according to the information they want, naturally have the intention that the deed will be used as

PENGADILAN NEGERI JAKARTA BARAT NOMOR 952/PID.B/2019/PN.JKT.BRT.)," *Indonesian Notary*: Vol. 2, Article 3. Available at: <https://scholarhub.ui.ac.id/notary/vol2/iss2/3>.

¹² Danaeefard, H., Ahmadzahi Torshab, A., Mostafazadeh, M., Delkhah, J., & Imanikhah, F. Organizational goal ambiguity and public service motivation: Evidence from Iran. *Personnel Review*, 51(9), (2022): 2103–2128. <https://doi.org/10.1108/PR-07-2020-0523>

evidence regarding the deed or legal action that they themselves explained or agreed to. Deliberation in making the deed is a preventive measure against the possibility of a dispute occurring in the future. 31 In Article 1867 of the Civil Code, "that proof in writing is carried out by means of an authentic deed or private deed." So the law itself has determined that the function of a deed is as written evidence, therefore the making of a deed is intended to be used as evidence.¹³.

An authentic deed whose formal and material requirements are met, then the authentic deed is valid as evidence and the value attached to the deed is the strength of an authentic deed, namely that the proof is perfect and binding. So the judge in this case is obliged to consider the authentic deed to be true and perfect, and what is postulated or stated is sufficiently proven. Notaries as public officials are tasked with making authentic deeds which are used as evidence which have perfect power, making Notaries have many responsibilities in carrying out their profession, namely that Notaries are charged with the responsibility of making deeds.¹⁴.

In this case, it is a responsibility for the material truth of the deed, in the construction of an unlawful act. Unlawful acts are referred to in both active and passive nature. Active nature means carrying out actions that can cause harm to other parties. Meanwhile, passiveness means not carrying out actions that are necessary, so that the other party suffers losses. So the elements of an unlawful act here are an unlawful act, a mistake and the resulting loss. An unlawful act here is interpreted broadly, namely an act that not only violates the law, but also violates propriety, decency or the rights of other people causing harm. An act is categorized as an unlawful act if the act:

- a. Violates other people's rights;
- b. Contrary to legal regulations;
- c. Contrary to decency;
- d. Contrary to propriety in paying attention to personal interests and property; other people in daily life.

Article 1320 of the Civil Code regulates 4 conditions that must be fulfilled regarding an agreement. If these conditions are not fulfilled, the deed can be declared cancelable or null and void by law. If you are harmed, you can demand responsibility from a Notary to provide reimbursement of costs, compensation or interest to the party mentioned in the deed, but this responsibility can be asked to the Notary, it must be based on the relationship between the Notary and the parties who appear before the Notary and there are parties who feel disadvantaged. as a direct result of a notarial deed.

In making an authentic deed, the Notary is obliged to comply with the provisions of the relevant Law. However, if there are errors in carrying out their office, the Notary can be held responsible, if it is proven that there is a violation of the code of ethics committed by the Notary in carrying out his office, the Notary can be subject to administrative sanctions as a form of accountability, in this case the sanctions that can

¹³Svara, JH Dichotomy and Duality: Reconceptualizing the Relationship Between Policy and Administration in Council-Manager Cities. *Public Administration Review*, 45, (1985): 221–232.

¹⁴Fernandez, S., & Rainey, HG Managing successful organizational change in the public sector. *Public Administration Review*, 66(2), (2006): 168–176. <https://doi.org/10.1111/j.1540-6210.2006.00570.x>

be imposed on the Notary by the Indonesian Notary Association (INI) is stated in Article 6 of the Amendment to the Code of Ethics for Notaries at the Extraordinary Congress of the Indonesian Notary Association, Banten 29-30 May 2015, namely:

1. Sanctions imposed on members who violate the Code of Ethics are in the form of:

- a. Reprimand;
- b. Warning;
- c. Temporary suspension of Association membership;
- d. Dismissal with honor from membership of the Association;
- e. Dishonorable dismissal from membership of the Association.

2. The imposition of sanctions as outlined above on members who violate the Code of Ethics is adjusted to the quantity and quality of the violations committed by the member."

In the UUJN, it is regulated that when a Notary is proven to have committed a violation in carrying out his official duties, the Notary can be subject to or be given sanctions, in the form of civil, administrative sanctions, and the notary's code of ethics, where these sanctions have been regulated in such a way in the UUJN and the Notary's Code of Ethics. The administrative sanctions for Notaries regulated in article 85 UUJN state that:

"Violation of the provisions as intended 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 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, sanctions may be imposed in the form of: a. verbal warning; b. written warning; c. temporary dismissal; d. honorable discharge, or e. dishonorable discharge."

The application of administrative sanctions for violations of the provisions of article 85 UUJN is carried out by the Regional Supervisory Council. If it can be proven that the Notary has violated the provisions in the UUJN, based on UUJN article 38 concerning the form of the deed and article 16 concerning the obligations of the Notary, then the Notary concerned may be subject to sanctions, based on the UUJN.

Crime in this case is a criminal act committed by a Notary in his capacity as a public official who has the authority to make authentic deeds. In the Criminal Code (hereinafter referred to as the Criminal Code), when carrying out duties as a Notary, not only can you be subject to civil or administrative sanctions, but you can also be subject to criminal sanctions as a form of accountability in criminal law.¹⁵

¹⁵Giauque, D., Anderfuhren-Biget, S., & Varone, F. Stress perception in public organizations: Expanding the job demands–job resources model by including public service motivation. *Review of Public Personnel Administration*, 33(1), (2013): 58–83. <https://doi.org/10.1177/0734371X12443264> see Montjoy, RS and Watson, DJ A Case for

Article 50 of the Criminal Code reads: "Whoever commits an act to implement the law, shall not be punished."

In this article, it can be concluded that if a Notary has carried out his profession in accordance with the provisions of the Law, then the Notary concerned cannot be punished or will not be subject to criminal sanctions.

Article 63 paragraph 1 of the Criminal Code reads: "If an act is included in several criminal provisions, then only one of those provisions is subject to it, if the penalties are different, then the provision with the heaviest principal penalty is imposed."

From the sound of this article, it states that if there is no special law that regulates a criminal offense for a particular profession, then general criminal penalties apply¹⁶. As we know, the UUJN does not regulate in detail and explain in detail the criminal penalties for Notaries who make mistakes or violate the law, therefore if a Notary commits a criminal act he will be subject to general criminal sanctions. The demand for Notarial responsibility arose since a dispute occurred related to notarial deeds which fulfilled the criminal elements, namely:

- a. Human actions;
- b. Fulfilling the formulation of the Legislative Regulations, meaning that the principle of legality applies, *nulum delictum nulla poena sine praevia lege poenali* (no act is prohibited and punishable by criminal law if this is not or has not been stated in the provisions of the Law;
- c. Is against the law.

As a public official entrusted with carrying out some of the state's duties, Notaries must be able to carry out their professional duties as best as possible in accordance with applicable laws and regulations. As a public official who is entrusted with carrying out some of the state's duties, a Notary cannot justify any means to carry out his duties or to achieve his professionalism. As a public official (*openbaar ambtenaar*), a Notary in carrying out his duties is obliged to fulfill the requirements determined by law, and is obliged to carry out his duties with full discipline, professionalism and moral integrity. because in carrying out the task of making an authentic deed, everything contained in the beginning and end of the deed is an expression that reflects the actual situation at the time the deed was made which is used as evidence. There are 3 (three) functions of an authentic deed for the parties who make it, namely:

- a. As proof that the parties concerned have entered into certain agreements;
- b. As proof for the parties that what is written in the agreement is the aim and desire of the parties;

Reinterpreting the Dichotomy of Politics and Administration as a Professional Standard in Council-Manager Government. *Public Administration Review*, 55, (1995): 231–239.

¹⁶Hondeghem, A., & Perry, JL EGPA symposium on public service motivation and performance: Introduction—Annie Hondeghem. *International Review of Administrative Sciences*, 75(1), (2009): 5–9. <https://doi.org/10.1177/0020852308099502>

- c. As proof to a third party that on a certain date, unless otherwise specified, the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties.

Making an authentic deed by a Notary aims to provide guarantees and can be a strong piece of evidence, but currently there are legal problems in making deeds made by Notaries as in the example of the case that the author raised in this research where the credit agreement deed was made using identity and documents. which was falsified by the facer (debtor). The credit agreement deed made by the Notary in the a quo case contains criminal elements because the parties involved in the process of making the deed provided false identities and documents in the authentic deed made by the Notary.¹⁷

In the case raised by the author, there was a problem involving a Notary's deed, that a Notary had been appointed by the bank to make an authentic deed as a contract for the implementation of a credit. In making a credit agreement deed, the parties come and fulfill all the requirements requested by the Notary as a condition for making an authentic deed, including the identity of the parties, information about the objects that are collateral in the agreement, as well as other documents that are the terms of the credit agreement. At the time the credit agreement deed is drawn up, all requirements have been fulfilled by the parties. So when there is a problem related to a deed made by a Notary, in this case a credit agreement deed, namely with fake identities and documents provided by prospective creditors, it must be investigated first.¹⁸, whether the deed is made in accordance with and fulfills all the requirements determined by law or not, if it is appropriate then the Notary has fulfilled all the elements in making the credit agreement deed, the Notary can be responsible for the deed he makes if in making the deed It is proven if a Notary is truly guilty, meaning truly guilty, namely if the Notary is proven guilty and has violated the provisions in the requirements for making an authentic deed.

Basically, evidence is a trial process in which each person attempts to convince or provide certainty to the judge through the evidence presented regarding the truth and untruth of certain events or circumstances. Notaries, in this case, as public officials who have the authority to make authentic deeds, often face legal problems where their deeds as evidence that have perfect evidentiary power are often questioned because the deeds made by the Notary contain fake identities, fake documents and false information as stated in referred to in articles 263, 264 and 266 of the Criminal Code, however, to state the truth of the parties who commit the forgery must go through a proof process which in the proof process in criminal procedural law uses a negative proof system, namely a system for finding the material truth of a judge In the evidentiary system before the court, in order for a crime to be imposed, two absolute requirements must be met, including the presence of sufficient evidence and the judge's confidence. In civil law, an authentic deed is a perfect means of proof based on

¹⁷Grant, AM Employees without a cause: The motivational effects of prosocial impact in public service. *International Public Management Journal*, 11(1), (2008): 48–66. <https://doi.org/10.1080/10967490801887905>

¹⁸Gregersen, DS, Petersen, CL, Rasmussen, MU, Andersen, LB, Bager, AV, Bjørnsig, A., Bøllingtoft, A., Grøn, RT, Jacobsen, CB, Jønsson, TF, Kjeldsen, AM, Lund, CS, Malmose, M., Pedersen, LD, & Tønnesvang, J. VUOS - Value-adding development of organizational collaboration. Technical reports. (2021). https://ps.au.dk/fileadmin/Statskundskab/CPL/Hjemmeside/VUOS_Baggrundsrapport.pdf

the principle of *acta publica probat sese ipsa*, which means that if a deed appears as a deed and fulfills the conditions that have been determined, the deed is valid and considered perfect as an authentic deed until proven otherwise.¹⁹

In criminal law, to look for material truth in criminal procedural law, of course in the judicial process to prove that an authentic deed made by a Notary contains elements of the criminal act of falsifying documents and false statements, both the Police, Prosecutors and Judges must pay attention to the truth of the truth and the strength of the evidence. external truth (*uitwendige bewijskracht*), formal evidential truth (*formale bewijskracht*) and material evidential truth (*materiele bewijskracht*)²⁰ so that in the process of proof elements of a criminal act are found in the deed made by the Notary. In criminal procedural law, the legal system of negative evidence is used based on Article 183 of the Criminal Procedure Code and valid evidence refers to Article 184 of the Criminal Code. Apart from that, the judge in handing down a decision must be based on his belief that the person can be said to be a perpetrator who fulfills the elements of an unlawful act under Articles 263, 264 and 266 of the Criminal Code. So that the deed can be said to fulfill the elements of an unlawful act based on the criminal act of forgery of a document with a false statement in an authentic deed made by a Notary.²¹

Because the Notary cannot be questioned before the court and there is the fact that in the process of granting credit there was a violation of the precautionary principle, there are several possible legal problems that could occur to the Notary in general, with the following explanation:

- a. Banks in providing credit to debtors and notaries in making a deed have something in common, namely that they both must apply the principle of prudence, the principle of prudence for banks is regulated in Article 8 of Republic of Indonesia Law No. 10 of 1998 concerning Amendments to Laws. Law No. 7 of 1992 concerning Banking in conjunction with Elucidation of Article 2 Paragraph (1) of Bank Indonesia Regulation Number: 5/7/PBI/2003, while the principle of notary prudence is regulated in Article 16 Paragraph (1) letter a UUJN-P,;
- b. If a bank is a State-Owned Enterprise, the credit provided is state money as stipulated in Article 1 Paragraph (1) of Republic of Indonesia Law No. 17 of 2003 concerning State Finances, the reduction in state money is a state loss as intended in Article 1 paragraph 22 of the Law No. 1 of 2004 concerning State Treasury. In this context, if in the future there is a new fact that the applicant uses fake statements and letters to get credit from the bank disbursed due to the involvement of the bank and the Notary who deliberately do not apply the principle of prudence to approve credit loans and legalize them in the form of certificates and certificates. a false identity from the person appearing, then both the bank and the Notary can carry out further investigations using the allegation of an unlawful act that could enrich oneself or someone who is detrimental to state finances as intended in Article 2 of the Corruption Crime Law in conjunction with Article 55 Paragraph

¹⁹ Ibid.

²⁰ Loc. Cit

²¹ Ibid.

- c. 1st of the Criminal Code if there is cooperation which implies an understanding or awareness of working together to realize a criminal act so that they are aware of what is being done or what is being attempted to realize a criminal act and there is a direct interest in the results of the criminal act committed then it can be said to be a participant in the delict.
- d. If during the trial there are facts regarding the photo on the identity card in the form of a KTP attached to the facing photo while the original photo of the KTP remains, on this basis the Witness in making the deed and the Notary who made the deed deliberately did not carefully examine the Facing KTP therefore there is an assumption that both the Witness and the Notary intentionally or provided an opportunity for the commission of a criminal act as intended in Article 378 in conjunction with Article 56 Paragraph (1) of the Criminal Code with an explanation regarding the elements of Article 378 of the Criminal Code as stated in the juridical description of the Public Prosecutor and for Article 56 Paragraph (1) of the Criminal Code it is implied that there was an element of intention in providing this assistance, before or when the crime was committed;
- e. As the facts at the trial regarding the photo on the identity card in the form of a KTP were attached with a facing photo while the original photo of the KTP still resulted in the credit agreement deed only having the power of proof as a private deed or a deed becoming null and void because it was made based on a false identity and information. fake, then the Notary can be sued to compensate for the losses suffered by the Bank as stipulated in Article 54 of the Republic of Indonesia Law No. 30 of 2004 concerning the Position of Notaries (UUJN).

As we all know, a Notary does not have the authority to carry out investigations or seek material truth from data and information provided by the parties (persons).²². This has an impact on the deed he makes which in the future becomes problematic, so problems will arise in terms of the Notary's form of responsibility for the process of making authentic deeds whose data and information are falsified by the parties, as in the case raised by the author in this research. Even though in principle it is in the Legislation that Notaries cannot be sued and held accountable for material truth in a deed, at least Notaries can apply the principle of prudence in carrying out their office.

If the Notary is proven to be negligent in checking identity in the form of a KTP or his duties as regulated in the UUJN then the Notary may be held criminally liable for his negligence in carrying out his duties in this case, namely being negligent in the element of the word "know" the person present even though the UUJN is not regulated in more detail. The concept regarding the intention of the presenter must be known to the Notary. In this case, if the Notary is proven not to be careful in checking the identity given by the presenter, the Notary does not carefully check the identity given to him by the presenter, because in making the deed of agreement²³The Notary's credit has trusted the bank which has often collaborated with the Notary in making credit agreement deeds as a creditor, so that the Notary trusts the bank and makes the Notary not pay attention and carefully examine the identity of the parties because the Notary assumes that the bank has carried out a previous survey. and making the Notary simply believe, this provides an opportunity for a criminal act to be committed

²²Ibid.

²³ Ibid.

as referred to in Article 378 in conjunction with Article 56 Paragraph (1) of the Criminal Code with an explanation of the elements of Article 378 of the Criminal Code as outlined by the Public Prosecutor's jurisdiction, before and when the crime was committed. Although the burden of responsibility in terms of proving material truth is not the responsibility of the Notary, when the Notary carries out his duties as a public official in making an authentic deed, he makes a mistake in checking the person's identification in the form of a KTP, which should be done carefully to fulfill the element of familiarity. referred to in the UUJN, a Notary can be held criminally liable because in criminal law the element of error consists of intentional error (dolus) and negligence (culpa) so it can be concluded that what the Notary did when checking the identity of the person who caused the legal problem was an error (culpa), then The notary can be held criminally liable for negligence or negligence (culpa). Therefore, if this is proven, the Notary's responsibility for the credit agreement deed made using a fake document cannot be borne by the Notary because basically the Notary is only responsible for the formal truth in making the authentic deed. However, if the Notary is proven to have been negligent and not careful in checking the identity of the person in the form of an Identity Card (KTP) and other matters which are his or her responsibility as a public official in making authentic deeds, as stipulated in the Law on Notary Positions, the Notary can be held liable. criminal.

In carrying out his duties as a public official, a notary should apply the principle of caution, this is carried out by a notary so that later the notary can prevent legal problems arising from authentic deeds he makes in the future. The precautionary principles that a Notary can apply in the process of making a deed are, recognizing the identity of the person present, carefully verifying the data of the subject and object of the person facing the document, giving a grace period in processing the deed, acting carefully, neatly and meticulously in the process of making the deed, complying with all the necessary techniques for making deeds and reporting if there are indications of money laundering.²⁴

4. CONCLUSION

The Notary's responsibility for the credit agreement deed made using a fake document cannot be borne by the Notary because basically the Notary is only responsible for formal truth in making the authentic deed, while proving material truth is the duty of the Police and Prosecutor's Office to seek material truth in the trial. . A notary can be charged with criminal liability if he or she is negligent and careless in checking the identity of the person in the form of a Resident Identity Card (KTP) and other things that are his or her responsibility as a public official in making authentic deeds, as stipulated in the Law on the Position of Notaries.

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²⁴Ibid.

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