

Notary Liability in Criminal Case Related To Deed He Made By Act No. 2 Of 2014 Concerning The Notary

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Abstract. The purpose of this study was to analyze: 1) Implementation of accountability Notary in a criminal case relating to a deed made by Act No. 2 of 2014 concerning Notary 2) The legal consequences for notarial deed if there is a criminal issue in deed, according to Act No. 2 of 2014 concerning Notary

This study is the juridical-normative approach derived from data obtained from the collection of primary data and secondary data, and then analyzed by qualitative analysis method. The data collection technique used was the study of literature. Data were analyzed using qualitative data analysis.

The research results are: 1) Implementation of accountability Notary in a criminal case relating to a deed made by Act No. 2 of 2014 concerning Notary that although in UUJN not regulate criminalization on Notary, does not mean notary immune to criminal law. If the Notaries summoned by the police, prosecutors or a judge, the agency that wants to call it shall request the approval of the Supervisory Council. In order to be criminally, a notary must fulfill the following elements: committing a crime, has the ability to be responsible, with intent or negligence, and no excuses. 2) The legal consequences for notarial deed in case of criminal matters in deed according to Act No. 2 of 2014 that if a Notary be proved in a court proceedings really committed the crime, and deed he made contains elements that are not true, then the deed in question only to have the strength of evidence as the deed under the hand or the deed degraded proof strength as a deed that has the strength of evidence as the deed under the hand. In the case of a notarial deed was canceled by the judge's decision in court, so if it causes damage to the interested parties, the notary can to provide compensation, insofar as it is caused by the fault of the Notary.

Keywords: Authentic Deed; Notary Public Liability; Crime.

1. Introduction

Notary as a public official has a central role in enforcing the law in Indonesia, because in addition to the notary so large quantity, known notary entered the elite group in Indonesia. Notary authorities in making authentic act and has a strategic position in providing legal certainty to the community, especially the field of engagement that occurs because of the agreement. The scope of responsibilities of notaries include formal correctness over the deed made. Notary is a legal profession as such notary is a noble profession (*nobile officium*). Notary birth can not be separated from the needs of every community that needs someone (figures) are descriptive captions are reliable,

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trustworthy whose signature and seal (capnya) provide a guarantee and as strong evidence.⁴

Thus notary duties and jabatannya should be guided by legislation, codes of ethics, and morals as in case of offenses committed by a notary would be very detrimental to the parties. If the deed that made flawed law notary must give morally and legally.⁵

In carrying out everyday tasks as a deed, a notary must be more careful, to check the identity applicant like Identity Card (KTP), Family Card is still valid or if it does not have the ID card as proof of identity Notary may request another identity such as Driving License (SIM) card, student card, and other legitimate identity. For foreigners instead of identity such as ID cards and driver's license, to be requested applicant of Passport. Once all conditions have been complemented by applicant then can then be made by notary deed. But in terms of the fulfillment of these procedures there is also a Notary Public who irregularities. Although it has been known that the identity does not correspond to applicant yet still made by a notarial deed of the notary. The formulation is based on the elements of crime of article 263 of the Criminal Code concerning sound authentic deed forgery committed by a Notary can not be applied to the perpetrators of the notaries who falsify an authentic deed. However, the Notary may sanction of Article 264 of the Criminal Code.⁶

Notary is a public official, by law appointed by the government, and the government appointed a notary is not just for the sake of the notary, but also for the public interest. Services rendered by the notary to the community concerning issues of great confidence. This responsibility can be either legal or moral responsibility.⁷

In accordance with the provisions of Act No. 2 of 2014 concerning Notary stating that: "The contents of the deed may not be altered or added, either writing overlap, insertion, deletion, or deletion and replace it with another." The issuance of a deed without the knowledge of the Applicant indicating a criminal act of forgery, as stipulated in Article 263 paragraph (1) of the criminal Justice Act (penal Code), which reads: Whoever makes false letter or forged which can give rise to a right, commitment or debt relief, or which is applied as proof of the thing with intent to use or have someone else wear the letter as if it was true and not false, threatened that if the use of can cause a loss, because of forgery, with a maximum imprisonment of six years.

Furthermore, Article 264 paragraph (1) to 1 of the Criminal Code states that forgery punishable by a maximum imprisonment of eight years, if committed against an authentic deeds. In Article 84 and Article 85 of Act No. 2 of 2014 on Notary arranged that when Notaries in performing his respective duties proved to have violated, then the notary may be subject or sanctions, in the form of civil sanctions, administrative,

⁴ Soegianto, 2015, *Etika Profesi dan Perlindungan Hukum Bagi Notaris*, CV. Farisma Indonesia, Yogyakarta, p. 2

⁵ Nur Cahyanti, Sri Endah Wahyuningsih, *Sanksi Terhadap Notaris yang Melakukan tindak Pidana Menurut Peraturan Perundang-Undangan di Indonesia*, Jurnal Akta Unissula, 2018, p.228

⁶ www.hukumonline.tindak crimes committed Notary, accessed May 6, 2019

⁷ Achmad Arif Kurniawan, *Pertanggungjawaban Pidana Notaris Dalam Hal Pekerja Notaris Melakukan Tindak Pidana Pemalsuan Surat*, Jurnal, UNS, 2017, p. 3

and ethical codes office Notary, and the sanctions have been arranged, well before the Regulation of the notary, and now in UUJN and notary Code, and did not impose criminal sanctions against the notary.

These aspects if proven violated by a Notary Public, a notary in question could be a civil or administrative sanctions. If these aspects can be proved to be the basis for administrative sanctions and civil sanctions against a Notary. On the other hand these aspects could be the basis for criminalizing Notary with basic notary has made a false or falsified letter with the qualification certificate as an offense committed by a Notary.⁸ The criminal case related to the notary office that the notary must be accountable to the authentic act were made based on this fact. Based on this background, lifted the title "Notary Liability In Criminal Cases Relating to the Deed had made According to Act No. 2 of 2014 concerning Notary."

This study tried to answer the problem of implementation of accountability Notary in a criminal case relating to a deed made by Act No. 2 of 2014 concerning Notary and legal consequences for the notarial deed if there is a criminal issue in deed according to Act No. 2 of 2014 concerning Notary.

This research using normative juridical approach. The data collection was done by collecting primary legal materials, secondary law, and tertiary legal materials. Primary legal materials, are materials which have the authority of law, which consists of legislation and official records or minutes of the creation of a legislation as well as the judge's decision.⁹ The data collection techniques in this proposal is the research literature. Then processed and analyzed using qualitative analysis methods and further methods of drawing conclusions using deductive method, which is common to think of things that lead to a special or specific using normative device so as to give a clear answer to the problem and research objectives.¹⁰

2. Results and Discussion

2.1 Implementation Criminal accountability Notaries in connection with the deed that made According to Act No. 2 Of 2014 On Notary

Notary is a public official authorized to make an authentic deed.¹¹ Notary authorized to make the authentic act on all deeds, agreements, and determination required by legislation or desired by the person concerned to be stated in an authentic deed, guaranteeing the creation date of the deed, saving certificates, giving grosse, copy, and official copies, all of it along a deed that is not also assigned or excluded to other officials or any other person specified by law.¹²

⁸Habib Adjie, 2014, *Hukum Notaris Indonesia*, Refika Aditama, Bandung, p. 25

⁹H. Zainuddin Ali, 2009, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, p. 47

¹⁰Soerjono Soekanto and Sri Mamudji, 1995, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p. 23.

¹¹ Article 1 (1) of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 of 2014 known by the Notary Act (UUJN)

¹² Ibid, Article 15 paragraph (1)

In carrying out his duties, a notary is under the supervision of the Ministry of Law and Human Rights (Kemenkumham). As described in Article 67 of Law UUJN:

- Oversight of Notaries by Minister
- In carrying out the monitoring referred to in paragraph (1) The Minister formed a Supervisory Council.
- Supervisory Council referred to in paragraph (2) amounted to 9 (nine), consists of elements:
 - The Government of 3 (three)
 - Notary Organization of 3 (three)
 - Experts or academics for three (3) people
- In the case of a region are not government agencies, as referred to in paragraph (3) letter a, membership in the Supervisory Council required of other elements that are appointed by the minister.
- Supervision referred to in paragraph (1) shall include the behavior and execution Notary Notary office.
- The provisions concerning the supervision referred to in paragraph (5) applies to Substitute and Acting Notary Public.¹³

Besides duty to conduct surveillance, Notary Council is also instrumental in providing guidance as well as sanctions. Notary Supervisory Council (MPN) consists of a Central Supervisory Council (MPP) was formed and domiciled in the State Capital, Regional Supervisory Council (MPW) was formed and located The Supervisory Council of the Provincial Capital and Regional (MPD) was formed and domiciled in the Capital District / City.

Notary a deed due to the request of the parties are facing, without any request from the parties, the notary will not make the deed any, and the notary make deed is based on evidence or testimony or the revelation of the parties is expressed or described or disclosed to or in Notary, the Notary frame and then outwardly, formal and material in the form of notarial deed, to remain grounded in the rule of law or procedure or procedures deed and rules of law relating to the relevant legal action as outlined in the deed.¹⁴

Notary practices found in reality, if there is a deed of Notary disputed by the parties or other parties, it is often Notary withdrawn as a party to participate in performing or helping commit a crime, that make or give false information to the notarial deed. This will cause confusion about the Notary intentionally (*culpa*) or mistake (*alpha*) along the applicant / parties to a deed which is intended from the beginning to having committed a crime.

In this regard, to request information on the report Notary certain parties for the sake of the investigation, under Article 66 UUJN namely:

- For the purposes of judicial proceedings, investigators, prosecutors or judges with the approval of the competent Notary Honorary Council:
 - take photocopies Minuta Deed and / or letters attached to Minuta Deed or the Protocol Notary Notaries in storage; and

¹³ Article 67 of Act No. 2 of 2014 on changes to Act No. 30 of 2004 concerning Notary (UUJN)

¹⁴ Habib Adjie, 2011, *Hukum Notaris Indonesia*, cet.3, PT. Refika Aditama, Bandung, p. 24

- Notary call to be present in the examination relating to the Deed or protocols that are in storage Notary Public.
- Minuta Deed or making photocopies of the letters referred to in paragraph (1) letter a, made news handover.
- Notary honor Assembly within a period of 30 (thirty) working days from the receipt of the request for approval referred to in paragraph (1) shall provide the answers to accept or reject the request for approval.¹⁵

If the Notaries summoned by the police, prosecutors or a judge, the agency that wants to call it shall request the approval of the Supervisory Council of Regions (MPD). The provisions of Article 66 UUJN is imperative or command. In practice today, there are also notaries who were called by the police, prosecutors or the judge immediately came face to intansi called him, without being checked first by the MPD sets the trivial to the MPD, if Notaries do like this, then it becomes the responsibility of the Notary itself, for example in case changes in the status of the witness into suspect or defendant.¹⁶

Accountability Notary as Acting General that a deed in case of legal problems in deed according to Act No. 2 Of 2014 On Notary, in UUJN arranged that when Notaries in performing his respective duties proved to have violated or legal issues in deed he had done, the Notary can subject to or impose sanctions, in the form of civil sanctions, administrative, and ethical codes office Notary, and the sanctions have been arranged, well before the PJN, and now in UUJN and code of Conduct Notary, and did not impose criminal sanctions against Notary , In practice it was found the fact that an action is legal or actual violations committed Notaries are subject to administrative sanction or criminal or ethical codes Notary office, but later withdrawn or qualified as a criminal offense committed by a Notary. The qualifying relating to aspects such as:¹⁷

- Certainty day, date, month, year and at facing.
- Parties (whom people) overlooking the Notary.
- Signature facing.
- A copy of the certificate does not match the deed minuta.
- A copy of the deed there, no deed minuta made.
- Minuta not complete signed certificate, but minutes of certificates issued.

These aspects if it proves to be violated by the Notary, then to the Notary in question are subject to civil penalties or administrative or these aspects are limits if it can be shown to be the basis for administrative sanctions and civil sanctions against a Notary, but turned in the other side such restrictions are criminally pursued or completed or as the basis for criminalizing basic Notary Notary to have made false or falsified letter with the qualification certificate as an offense committed by a Notary.

The conditions of a Notary may be cited as involved and responsible with criminal offenses, namely:

- In light of the subjective, there is a second condition:

¹⁵ Article 66 of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary

¹⁶ Habib Adjie, 2011, *Hukum Notaris Indonesia*, Op.cit, p. 24

¹⁷ Habib Adjie, 2013, *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, op.cit, p.120

- Their inner relationship (deliberate) with a criminal offense to be realized, that is deliberate in doing the realization of a criminal offense. Here, little or no interest for the realization of many criminal acts.
- Their inner relationship (intentional) like to know among themselves with other participants and even to what was done by the other participants.
- In the light of the objective, is that the actions of the existing relationship with the establishment of a criminal offense, or in other words a form of action that people objectively there is the role/positive influence whether large or small, to the realization of a felony.

Conversely according to the second doctrine This is an objective, which focuses in the form of what works well as far as where the role and contribution and influence positive of the deed form the incidence of offenses intended, which determines how heavy responsibility dibebannya the occurrence of a crime.¹⁸

Thus the criminal prosecution against Notaries can only be done with limitations, if:¹⁹

- There are legal actions of Notary of aspects of birth, formal and material deed deliberately, with full awareness and conviction as well as planned, that the deed of Notary or Notary together (agree) the applicant to serve as the basis for a penal offense.
- There is a legal act of the Notary in a deed in the presence of or by a Notary if measured by UUJN incompatible with UUJN.
- Notary action is also not appropriate according to the authorized agency to assess the actions of a Notary, in this case the Supervisory Council of Notaries.

The imposition of criminal sanctions against Notaries do all restrictions referred to above are violated means that in addition to meeting the formulation violations in UUJN, Notary Code of Ethics must also meet the formula in the Criminal Code. If the action Notary meet the formulation of an offense, but if it is based UUJN and according to the assessment of the Council of Trustees Notary is not a violation, then the Notary question can not be sentenced to a criminal, as a measure to assess a deed should be based on UUJN and Code of Conduct Notary.

The occurrence of punishment against notarized under deed made by or in the presence of a Notary as the output performance of the duties of office or authority Notary, without regard to the rules of law relating to the procedures for deed and only under the Criminal Code alone, indicating that there has been a misunderstanding or interpretation of the position of Notary and Notary deed as evidence in the civil law.²⁰

Criminal sanctions is *ultimum remedium*, the latter drug, if sanctions or measures on other legal branches does not work or is not considered effective. Therefore, its use should be limited. If there's another way, do not use the criminal law. The examination of offenses committed by public notary examination should be done holistic-integral, by looking at the aspect of outward, formal and material Notary deed, and the execution

¹⁸Adami Chazawi, 2008, *Pelajaran Hukum Pidana (Percobaan & Penyertaan)*, PT. Raja Grafindo Persada, Jakarta, p. 75.

¹⁹Habib Adjie, 2011, *Hukum Notaris Indonesia, Op.cit*, p. 30

²⁰Sudarto, 1988, *Hukum Pidana I, Badan Penyediaan Bahan-bahan Kuliah Fakultas Hukum Universitas Diopnegoro*, Semarang, p. 13

of duties of office Notary appropriate authority Notary, in addition rests on the rule of law governing offenses committed Notary, also needs to be combined with the practical realities of the Notary.

2.2 Effects For Deed If Violation Occurs On Making Deeds According to Act No. 2 of 2014 concerning Notary

Notary's obligation to know the laws that apply in the State of Indonesia as well as well as to determine what laws apply to the parties to come to the notary to make the deed. It is very important so that the deed made by the notary's own authenticity as an authentic act as perfect as evidence. But can only make a mistake in the notarial deed. The errors that may occur, namely:

- Typo in a copy of notary, in this case the error can be corrected by creating a new copy of the same with the original and only copy of the same with a new original has same strength as the original deed.
- Error notarial deed form, in this case which was made in the meeting minutes but by a notary is made as a statement of the meeting's decision.
- Error contents notarial deed, in this case on the testimony of the parties facing a notary, at which time a deed considered correct but it turned out later not true.²¹

The errors occurred in the deed made by the notary will be corrected by the judge at the time of the notarial deed submitted to the court as evidence. The authority of the judge to declare a notary's certificate null and void, may be canceled or the notarial deed otherwise not be legally enforceable. Violations committed by notaries to the provisions of Article 16 (1) letter i. Article 16 (1) k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, Article 52 of Act No. 2 of 2014 On Notary, which led to a deed only has the strength of evidence as a deed in under hand or certificate becomes null and void, then the adverse party can demand reimbursement of expenses, damages and interest to the notary.²²

In this case there are three (3) aspects that must be considered when the deed is made, these aspects related to the probative value, namely:²³

- Outwardly (*uitwendige bewijskracht*)
Outwardly ability notarial deed, the deed itself is the ability to prove its legitimacy as an authentic deed. In this case the burden of proof is on the party who deny the authenticity of notarial deed. Proof of this kind must be done through the efforts of a lawsuit to court. The plaintiff must prove that the object of the lawsuit outwardly deed not Notary deed.
- Formal (*formele bewijskracht*)
Notary deed must provide certainty that something of events and facts in the deed actually performed by a Notary or explained by the parties were facing at the time listed in the deed in accordance with the procedures specified in the deed Notary If

²¹ Mudofir Hadi, "Varia Peradilan Tahun VI Nomor 72", Pembatalan Isi Akta Notaris "Dengan Putusan Hakim" (September 1991): 142-143.

²²G.H.S Lumban Tobing *Op.Cit* , p.84

²³Habib Adjie, 2011, *Hukum Notaris Indonesia, Op.cit*, p. 26

the formal aspects of an issue for the party, it must be proved and the formalities of the certificate, which must be able to debunk the day, date, month, year, and at facing, debunk they are facing, debunk what they see, be seen and heard by the Notary, also must be able to prove the untruth statements or statements of the parties provided / delivered before Notary and untruth signatures of the parties, witnesses and the Notary deed or there are procedures that are not performed.

- Material (*materiele bewijskracht*)

Is certainty about the material deed, that what is mentioned in the deed is valid evidence against the parties that a deed or those who have the right and apply to the public, unless there is evidence otherwise (*tegenbewijs*). If it will prove aspects materially from the deed, then the question must be able to prove, that the Notary does not explain or express the actual deed (deed officials), or the parties have correctly said (Notary) is not correctly said, and should be done of proof to deny the material aspects of the notarial deed.

These three aspects mentioned above is perfection notarial deed as an authentic deed and anyone bound by the deed. If you can be evidenced a trial court, there is one aspect that is not true, then the deed in question only has the strength of evidence as the deed under the hand or the deed degraded proof strength as a deed that has the strength of evidence as the deed under the hand. Notary deed made without an arbitrary it can be concluded that the deed in question null and void, of all acts or the legal action in the deed shall be deemed never happened, and the deed like this can not be executed.²⁴

In the case of a notarial deed was canceled by the decision of a judge in court, so if it causes damage to the interested parties, the notary can to provide compensation, insofar as it is caused by the fault of the Notary, but in the case of cancellation of a notary deed by the court is not detrimental to the interested parties notary can not be required to provide compensation despite the loss of reputation. A notary can only be said to be free from legal liability if he had made and authentic act or made before him have met the formal requirements. If the notary is found to violate the provisions of the Act in force that meets the elements of crime contained in the article of the Criminal Code on the notary can be imprisoned or punished.

3. Closing

3.1. Conclusion

Based on the description above, the conclusions of this study are:

- Implementation of accountability Notary in a criminal case relating to a deed made by Act No. 2 of 2014 concerning Notary that although in UUJN not regulate pemindaan Notary, does not mean notary immune to criminal law. In carrying out his duties, a notary is under the supervision of the Ministry of Law and Human Rights (Kemenkumham). If the Notaries summoned by the police, prosecutors or a judge, the agency that wants to call it shall request the approval of the Supervisory

²⁴Habib Adjie, 2015, *Penafsiran Tematik Hukum Notaris di Indonesia (Berdasarkan UU No. 2 Tahun 2014 tentang perubahan UU No. 30 Tahun 2004)*, PT. Refika Aditama, Bandung, p. 14

Council of Regions (MPD). Accountability Notary as Acting General that a deed in case of legal problems in deed in UUJN arranged that when Notaries in performing his respective duties proved to have violated or legal issues in deed he had done, the Notary may be subject or sanctions, in the form of civil sanctions, administrative, and Notary office code of conduct, and sanctions have been arranged, well before the PJN, and now in UUJN and Notary code, and did not impose criminal sanctions against the Notary.

- The legal consequences for notarial deed if there is a criminal issue in deed according to Act No. 2 of 2014 concerning Notary namely jika a Notary can be evidenced in a court court really committed the crime, and deed he made contains elements that are not true, then the deed in question only has the strength of evidence as the deed under the hand or the deed degraded proof strength as a deed that has the strength of evidence as the deed under the hand. In the case of a notarial deed was canceled by the decision of a judge in court, so if it causes damage to the interested parties, the notary can to provide compensation, insofar as it is caused by the fault of the Notary, but in the case of cancellation of a notary deed by the court is not detrimental to the interested parties notary cannot be required to provide compensation despite the loss of reputation.

3.2. Suggestion

- For preventing a criminal offense to do Notaries, the Supervisory Council should strive to be more creative and careful in making efforts guidance and supervision of a Notary.
- Notary should always learn about his authority, are also required to disseminate to the public, so that people get more complete information about the science of notaries.
- Police investigators in conducting the examination to the Notary must follow the rules, which must ask the permission of the Supervisory Council of the Notary prior to the call and further in-depth examination.

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