

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Notary Liability for Authentic Deeds Indicating Criminal Acts: A Legal Review and Legal Implications

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Abstract. *This research discusses the notary's liability for authentic deeds that indicate criminal offences in the context of Indonesian law. Notary liability in making authentic deeds is an important issue considering the strategic role of notaries in maintaining the validity and propriety of the deed. However, there are cases where authentic deeds made by notaries are indicated to contain elements of criminal offences, such as document forgery or fraud. This research aims to analyse the legal implications for the parties involved in the process of making authentic deeds that are indicated as criminal offences, as well as provide suggestions to improve notary compliance with the rule of law. The research methods used include literature studies, case studies, interviews, normative legal analysis, comparative studies, field research, and data analysis. The results show that the parties involved in the process of making authentic deeds that are indicated as criminal offences can face serious legal consequences, ranging from civil sanctions to criminal sanctions according to the level of violation committed. The legal implications can also be felt by the notaries involved, with the threat of administrative, civil, and criminal sanctions. The proposed suggestions include increased supervision, training, compliance with regulations, transparency, accountability, reporting and complaints, and the application of strict sanctions. It is hoped that by implementing these suggestions, it can increase notary compliance with the rule of law, prevent the occurrence of authentic deed cases that indicate criminal offences, and maintain the integrity and public trust in notary institutions and the process of making authentic deeds in Indonesia.*

Keywords: *Authentic; Criminal; Implications; Liability; Notary.*

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1. Introduction

The notary's liability for authentic deeds indicating criminal acts is an important issue in legal practice in Indonesia. As a party with a crucial role in the creation of authentic deeds, notaries have a significant responsibility to ensure the validity, authenticity, and propriety of each deed created. However, there are cases where authentic deeds created by notaries are suspected of containing elements of criminal offenses, such as document forgery, fraud, or other criminal acts.

In this context, a thorough legal review is necessary regarding the liability of notaries in cases of authentic deeds that are indicative of criminal acts. This not only includes the legal aspects applicable to notaries as officials authorized to make authentic deeds, but also the legal implications for the parties involved in the deed, such as those who attend the deed-making process and those affected by the deed that is indicative of a criminal act.

However, in some cases, there are indications that authentic deeds made by notaries contain elements of criminal offenses, such as document forgery, fraud, or other criminal offenses. This raises questions about the accountability of notaries in cases of authentic deeds that are suspected of criminal offenses, as well as the legal implications for the parties involved in the process.

By understanding the accountability of notaries for authentic deeds that are suspected of criminal offenses, as well as the legal implications, it is hoped that this will provide a deeper understanding of legal protection in the process of making authentic deeds and efforts to prevent the misuse of authority by notaries.

2. Research Methods

The research problem in this study uses a normative legal research method, which uses secondary data obtained indirectly, including primary legal materials. The data obtained is then collected through a documentary study or literature study data collection technique by collecting data based on legal materials that have been used in this study. This data is then analyzed using a qualitative data analysis technique. As the research aims to provide a prediction, to describe the findings obtained in this study, and to find conclusions that are correct and scientifically accountable.

3. Results and Discussion

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3.1. Notary's Liability for Authentic Deeds with Indications of Criminal Offenses in the Context of Indonesian Law

Based on Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Notary Office, the regulation regarding any criminal act committed by a Notary in the issuance of a deed is based on several provisions as stipulated in Article 15 paragraphs (1), (2) and (3) which states that a notary:

- a. Must have professionalism
- b. Must refuse to provide services if it conflicts with the Notary Law and legal regulations
- c. Must have good moral integrity
- d. Must provide legal counseling related to the deeds made by him/her

The notary's responsibility for authentic deeds that are suspected of criminal acts is a complex issue in Indonesian legal practice. As an official who plays an important role in the creation of authentic deeds, a notary has a great responsibility to ensure the validity and propriety of every deed created. However, there are cases where authentic deeds created by a notary are suspected of containing elements of criminal acts, such as document forgery or fraud.

In the context of Indonesian law, notaries are governed by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Profession. This Law regulates the duties, authorities, obligations, and responsibilities of notaries in carrying out their profession. One of the notary's responsibilities is to ensure that every deed they create meets the requirements of being valid, authentic, and in accordance with applicable laws and regulations.

The regulations regarding deeds can be found in the Civil Code, which divides deeds into several provisions as follows:

- a. Akta Otentik Adalah akta yang dibuat oleh pejabat yang diberi wewenang untuk itu oleh penguasa, menurut ketentuan-ketentuan yang telah ditetapkan, baik dengan maupun tanpa bantuan dari yang berkepentingan (lihat Pasal 165 HIR, 1868 BW, dan 285 Rbg) Akta otentik menurut Pasal 1868 KUH Perdata:

Suatu akta dalam bentuk yang ditentukan oleh undang-undang dibuat oleh atau dihadapan pejabat umum yang berwenang untuk itu ditempat akta dibuat.

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Pasal 1 angka 1 Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris “Notaris adalah pejabat umum yang berwenang untuk membuat akta otentik dan kewenangan lainnya sebagaimana dimaksud dalam undang-undang ini” Pasal 1 angka 7 Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris “Akta Notaris adalah akta otentik yang dibuat oleh atau dihadapan Notaris menurut bentuk dan tata cara yang ditetapkan dalam undang undang ini”. Akta Otentik menurut Pasal 285 Rbg: Yaitu yang dibuat, dengan bentuk yang sesuai dengan undang-undang oleh atau dihadapan pejabat umum yang berwenang di tempat akta itu dibuat, merupakan bukti lengkap antara para pihak serta keturunannya dan mereka yang mendapatkan hak tentang apa yang dimuat di dalamnya dan bahkan tentang suatu pernyataan belaka; hal terakhir ini sepanjang pernyataan itu ada hubungan langsung dengan apa yang menjadi pokok akta itu. Dapat dikatakan bahwa Akta Otentik adalah akta yang dibuat dan dipersiapkan oleh Notaris atau pejabat resmi lainnya (misalnya Camat selaku Pejabat Pembuat Akta Tanah) untuk kepentingan pihak-pihak dalam kontrak.

b. Akta di bawah Tangan Adalah akta yang sengaja dibuat untuk pembuktian oleh para pihak tanpa bantuan dari seorang pejabat.

Formal Function (Formalitas Causa): This function serves to complete or perfect a legal act, not to validate it. In other words, a deed is a formal requirement for the existence of a legal act. Evidentiary Function (Probationis Causa): A deed functions as evidence because it is intentionally created from the outset for proof at a later date. The written nature of this agreement in the form of a deed does not make the agreement valid, but is only to be used as evidence in the future.

If an authentic deed made by a notary is suspected of a crime, the notary can be held legally liable in accordance with applicable laws and regulations. This includes administrative, civil, and criminal sanctions in accordance with the level of the offense committed by the notary. The notary can also be disciplined by the Notary Disciplinary Council if proven to have violated the code of ethics or applicable regulations in carrying out their duties.

The elements of a criminal offense related to the implementation of the notary position include, as listed below:

1. Forgery of Authentic Deeds (Article 263 of the Criminal Code): Forgery of Ordinary Documents
Objective elements: Action:

a) Making a false document;

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b) Falsifying a document. Object: "Document"

- 1) Creates a right;
- 2) Creates an obligation;
- 3) Creates a discharge of debt;
- 4) Is intended as proof of something.

Consequences: Can cause damage. Subjective element: Intentionally using or instructing another person to use the document as if its content were true and not false.

2. Article 264 paragraph 1 of the Criminal Code concerning the Criminal Offense of Forgery of Authentic Deeds. It has the same objective and subjective elements as Article 263 of the Criminal Code.

3. An authentic deed has a form determined by the Law on the Notary Office, while an ordinary document has a free form. Therefore, to prove whether the element of making a false document or falsifying a document exists, it is necessary to refer to the Law on the Notary Office (UUJN); the subjective element is that there must be an error in the form of intent or an unlawful act, which must also be proven based on the UUJN.

4. In criminal offenses related to the notary office, expert witnesses from professional organizations are absolutely required, not from academics.

In the case of authentic deeds that are suspected of criminal acts, the legal implications can also be felt by the parties involved in the deed. Parties who feel aggrieved as a result of an authentic deed suspected of a criminal act can file a civil lawsuit in court to request cancellation or revalidation of the deed. Legal implications can also include criminal sanctions for parties directly involved in the criminal act that occurred in the making of the authentic deed.

Therefore, it is important for notaries to always carry out their duties with full integrity, honesty, and compliance with applicable legal regulations. The notary's responsibility for authentic deeds that are suspected of being criminal acts must be carried out in earnest to prevent abuse of authority and to protect the public interest and the parties involved in the process of making the deed.

2. Legal Implications for the Parties Involved

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The legal implications of an authentic deed that is suspected of a criminal act for the parties involved in the process can be very significant. The parties involved, either directly or indirectly, in the creation or use of the authentic deed may face serious legal consequences according to the regulations in force in Indonesia. The parties who attend the process of making an authentic deed that is suspected of a criminal act, such as the parties who sign the deed or provide information before a notary, may be involved in the legal process as witnesses by the party who feels aggrieved or by the authorities handling the case. They may be asked to provide information or evidence related to the process of making the authentic deed.

For those who feel prejudiced by an authentic deed that is indicated as a criminal act, they have the right to file a civil lawsuit in court to request the cancellation or revalidation of the deed. The injured party can also file a claim for compensation for the losses suffered as a result of the deed. Parties directly involved in criminal acts that occur in the making of an authentic deed can also be subject to criminal sanctions in accordance with applicable laws. They can be subject to legal action and prosecuted criminally by the competent law enforcement officers, such as the police and the prosecutor's office, in accordance with the level of violation committed.

The legal implications for notaries who are involved in cases of authentic deeds that are suspected of criminal acts can also be very severe. Notaries can be prosecuted in accordance with applicable laws and regulations, such as the Law on the Notarial Profession. They can also be subject to administrative and disciplinary sanctions by the Notarial Disciplinary Council if they are found to have violated the code of ethics or rules in carrying out their professional duties.

If a notarial deed is challenged in court and declared invalid, then the invalidity must be proven from the external, formal and material aspects of the notarial deed. One of the provisions that can be applied to a notary is criminal law enforcement, if the notary has committed a criminal act.

In addition, the legal implications can also be felt by the general public. Cases of authentic deeds that are suspected of criminal acts can lead to distrust in the notary institution and the process of making authentic deeds as a whole. This can harm the public in terms of legal certainty and protection of their rights.

In the case of authentic deeds that are suspected of criminal acts, it is important for the parties involved to immediately take the necessary legal steps to protect their rights and interests. Involvement in the legal process can help clarify the situation and determine the responsibility and consequences that must be borne by each party.

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Therefore, understanding the legal implications of cases involving authentic deeds suspected of criminal activity is crucial for all parties involved in the process. Compliance with legal regulations and appropriate actions in dealing with such situations can help prevent abuse and protect the interests of all parties involved.

4. Conclusion

In cases of authentic deeds suspected of criminal activity, there are significant legal implications for all parties involved. Parties involved in the process of creating an authentic deed, both as witnesses and signatories, may be involved in the legal process as evidence or victims. They have the right to file civil lawsuits, provide testimony, or face criminal penalties if they are involved in a criminal act. The notary as the official responsible for preparing the authentic deed can also face serious legal consequences if proven to be involved in the case. They may be subject to administrative, civil, or criminal penalties in accordance with applicable laws and regulations. Furthermore, the legal implications of criminal cases involving authentic deeds can also harm the public in general, leading to a lack of trust in the notary institution and the process of creating authentic deeds. In conclusion, it is important for all parties involved in the process of creating an authentic deed to fully understand its legal implications. Compliance with legal regulations, integrity, and honesty in carrying out duties are crucial in preventing abuse of authority and protecting the interests of all parties involved. With a better understanding of the accountability of notaries and its legal implications, it is hoped that a more just, transparent, and trustworthy legal environment can be created in the practice of notaries in Indonesia. Based on the conclusions above, the author provides the following suggestions: Strengthening Supervision: 1. Strict supervision is required over the practices of notaries in the making of authentic deeds to prevent abuse of authority and unlawful actions. 2. Enhanced Training: Notaries need to receive continuous training and education on the code of ethics, procedures for making authentic deeds, and a deeper understanding of applicable criminal law. 3. Compliance with Regulations: Notaries and related parties must always comply with applicable legal regulations in the making of authentic deeds to maintain integrity and public trust. 4. Transparency and Accountability: It is important for notaries to carry out their duties in a transparent and accountable manner and be prepared to take responsibility for any actions and decisions taken in the process of making authentic deeds. 5. Reporting and Complaints: The public needs to be encouraged to report cases of authentic deeds that indicate criminal acts to ensure fair and transparent law enforcement. 6. Strict Sanctions: The government needs to impose strict sanctions on notaries who are proven to have violated the law in the making of authentic deeds, as a means of preventing similar cases in the future. By implementing the above suggestions, it is expected to increase notary compliance with legal regulations, prevent

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the occurrence of authentic deeds that are indicated as criminal acts, and maintain the integrity and public trust in notary institutions and the process of making authentic deeds in Indonesia.

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