

The Role of the Notary Supervisory Board Against Falsification of Documents by Notaries in Making Authentic Deeds

Kanzha Diva Salzabila*)

*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: kanzhadsalzabila15@gmail.com

Abstract. *This study aims to analyze: 1) The role of the Notary Supervisory Council against document falsification by a notary in making an authentic deed. 2) The responsibility of the Notary who falsifies documents in the making of an authentic deed. The approach method used in discussing this research problem is a sociological juridical approach. The research specifications used are descriptive analytical research. This type of data uses primary and secondary data obtained through interviews and literature studies. The data analysis method used is qualitative. The results of the study concluded: 1) The role of the Notary Supervisory Board against falsification of documents by a notary in making a deed is the attribution of authority sourced from the Legislation. The Notary Supervisory Board's role is to conduct an examination of alleged violations of the behavior and implementation of the Notary's position and impose sanctions if proven guilty. In a lawsuit involving a Notary, the Regional Supervisory Council was tasked with receiving reports, followed by an examination by the Regional Supervisory Council, and the imposition of sanctions if found guilty by the Central Supervisory Council. 2) The responsibility of a Notary who falsifies documents in making an authentic deed is a responsibility that adheres to the principle of responsibility based on fault of liability, meaning that the Notary must be responsible if the deed he made contains an error or intentional violation by the Notary, otherwise, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The Notary concerned cannot be held accountable, because the Notary only records what was conveyed by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties.*

Keywords: Authentic; Deed; Notary; Supervisory.

1. Introduction

The agreement is growing along with the times, in order to obtain legal certainty and protection, the community puts the agreement into an authentic deed.

Article 1868 of the Civil Code requires that a deed has the strength of authentic evidence, it must be made by an authorized Public Official. So not everyone can or may make an authentic deed, but only public officials who are authorized by law to make authentic deed.¹ The journey of a notary in Indonesia has developed in accordance with the development of the Indonesian state and nation. Contemporary history of Indonesia records that during the reformation era there was a significant change in the notary institution. This change was marked by the success of the Reform Order government in enacting Act No. 30 of 2004 concerning the Position of Notary Public (UUJN), which was later amended by Act No. 2 of 2014.²

The purpose of making written agreements before or made by a Notary is so that the deed becomes an authentic deed that can be used as strong evidence if one day there is a dispute between the parties or there is a lawsuit from another party. An authentic deed provides binding and perfect evidence against the parties (along with their heirs).³ The power attached to an authentic deed is perfect and binding, which means that if the authentic deed evidence submitted fulfills the formal and material requirements and the opposing evidence presented by the defendant does not reduce its existence, it also has perfect and binding evidentiary powers attached (*volledig en bindende bewijskracht*), thus the truth of the contents and statements contained therein will be perfect and binding on the parties regarding what is referred to in the deed. Perfect and binding on the judge so that the judge must make it a perfect and sufficient factual basis to make a decision on the settlement of the disputed case.⁴

The authority to make authentic deeds is only carried out by a Notary insofar as the making of certain authentic deeds is not reserved for other public officials. It can be concluded that the Notary is the only public official who has the authority to do so. Knowing the importance of the duties and position of a Notary in the midst of society and the strength of evidence from the authentic deed he made, it can be said that the position of a Notary is a position of trust. The position of trust given by law and society requires that a person who works as a Notary Public is responsible for carrying out this trust as well as possible and upholding legal ethics, dignity and the nobility of his position.⁵Notaries in carrying out their

¹ Sukarmi. Notary Authority in Making Authentic Deeds Relating to Cooperation Contracts. *Deed Journal*. Volume 5 Number 2 March 2018. p.15

²Rita Permanasari. Ahmad Khishni. Legal Immunity for Notaries Who Disclose Secrets . *Position. Deed Journal*. Volume 5 Number 2 March 2018. p.26

³Kunni Afifah. Responsibilities and Legal Protection for Notaries Civilly Against the Deeds Made. *Journal of the Lex Renaissance*. Number 1 Volume 2 January 2017. p. 150

⁴Christin Sasauw. Juridical Review of the Binding Power of a Notary Deed. *Lex Private Journal*. Volume III Number 1. 2015. p. 100.

⁵Habib Adjie. (2009). *Indonesian Notary Law (Thematic Interpretation of the Position Law No. 30 of 2004 Concerning the Position of Notary*. Bandung: Refika Aditama. p. 40

duties provide services to people who need their services as well as possible. Notaries also provide legal counseling to their clients to achieve high legal awareness so that people are aware of and live up to their rights and obligations as citizens and community members.⁶

The most important and strategic positive side created by UUJN, is the formation of the Notary Profession Court which is carried out by the Notary Supervisory Council which is tiered according to their respective duties and authorities. Based on Article 1 Paragraph 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, as well as the Budget of the Notary Supervisory Board, the notary Supervisory Board means a body that has the authority and obligation to carry out the guidance and supervision of the Notary. The Notary Supervisory Council can be referred to as the Notary Professional Court, because in principle the Notary Supervisory Council has the scope of authority, namely to hold hearings, examine,⁷

In practice, notaries are often involved in legal cases either as witnesses or as suspects.⁸Notary involvement in the caselawcaused by an error in the deed he made, either due to the fault of the Notary himself or the fault of the parties or one of the parties who did not provide actual information or documents (lack of good faith from the parties or one of the parties) or there was an agreement between the Notary and one of the parties causing harm to the other party (notary participates in committing a crime).

In connection with the deed he made, the Notary must be held criminally responsible for causing harm to the parties or one of the parties.⁹Basically, a notary cannot be held criminally responsible, because a notary is only responsible for the formal side of making a deed. Related to this, if there is an alleged involvement of Notary officials in acts against the law and participating in committing crimes in forging documents. Which in Indonesian law forgery of something is a form of crime that has been regulated in the criminal law code (KUHP). Provisions regarding participating in and helping to commit can be seen in Article 55 (co-conducting) and Article 56 of the Criminal Code.

⁶Ndaru Satrio. Juridical Analysis of the Crime of Providing False Information in an Authentic Deed as Meant in Article 266 Paragraph (1). Journal of LEX Certa. Volume 1 Number 1 2016. p.97

⁷Notary Profession Court. New Paradigm. Renvoi Magazine. Year 2006. number 642 IV. p.10

⁸Mulyoto. 2010. Notary Errors in Making Deeds of Basic Amendments to CV. Media Horizon. Jakarta. Thing. 2

⁹Ira Koesoemawati and Yunirman Rijan. (2009). To Notary. Jakarta: Achieve Asa Success (RAS). Thing. 82

The function and role of a notary in the movement of national development which is increasingly complex today is of course wider and more developed, because the smoothness and legal certainty carried out by all parties is increasing and widening, and this is of course inseparable from the services and legal products produced by a notary. The government and the wider community certainly have hope that the services provided by the Notary really have value and weight that can be accounted for.¹⁰Notaries in carrying out their duties must be guided by the UUJN and the notary's code of ethics. Notaries who commit violations will receive sanctions from the Notary Supervisory Board.

2. Research Methods

The approach method used in discussing the problem of this research is a sociological juridical approach. The research specifications used are analytical descriptive research. Types of data using primary and secondary data obtained through interviews and literature. The data analysis method used is qualitative.

3. Results and Discussion

3.1. The Role of the Notary Supervisory Board Against Document Forgery by Notaries in Making Authentic Deeds in Kendari City

As it is known that an authentic deed is binding and perfect evidence.¹¹An authentic deed can be canceled because it is proven that the basis for making it was in the form of a fake document. The notary deed that was canceled was affected by the notary's lack of caution in carrying out his duties and authority. This also shows the lack of supervision and guidance of Notaries. Historically, the concept of supervision of notaries in Indonesia has a quite long history and the authority that supervises it has also undergone several changes, which are currently held by the Notary Supervisory Council.¹²The Notary Supervisory Council has a supervisory role that is preventive in nature and fosters notaries.¹³ Before carrying out the authority and duties as the Supervisory Board, each member of the Supervisory Board must be sworn in and take an oath/pledge of office before the authorized official. Based on Philipus M. Hadjon's theory of

¹⁰Dwiky. Umar Ma'ruf. The Role of the Regional Supervisory Board (MPD) in Supervising the Implementation of the Office of a Notary in Tegal Regency. Deed Journal. Volume 5 Number 1 March 2018. p.180

¹¹Riduan Syahrani. (2016). The Judicial System and Civil Procedure Code in Indonesia . Bandung: Citra Aditya Bakti. Thing. 90.

¹²Ghansham Anand en Syafruddin Syafruddin. Supervision of Notaries in Relation to Compliance with Running Office. Lambung Mangkurat Law Journal . Volume 1 Number 1 (2016). Thing. 94-97.

¹³Raifina Oktiva. et al.. The Role of the Notary Supervisory Board Regarding the Inclusion of Self Protection Clauses. Udayana Master Law Journal (Udayana Master Law Journal). Volume 10 Number 2 July 2021. p.382

authority, the authority of the Notary Supervisory Board in conducting guidance, supervision, inspection and imposing sanctions on a notary is an attribution authority obtained based on statutory regulations. This authority is regulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Offices (UUJN), Minister of Law and Human Rights Regulation Number 24 of 2018 concerning Third Amendments to Regulations of the Minister of Law and Human Rights Number 29 of 2015 concerning the Organization and Work Procedure of the Ministry of Law and Human Rights of the Republic of Indonesia, Supervision of notaries by the Notary Supervisory Board includes supervision of the notary's behavior and supervision of the implementation of the notary's position (Article 67 paragraph (5) UUJN). The authority of the Notary Supervisory Board in supervising the behavior of a notary and the performance of a notary's position consists of 3 (three) aspects, namely:

1. Preventive supervision.
2. Curative supervision.
3. coaching.

Specifically in the context of supervising the implementation of the notary's office, of course the notary's office rules are the main parameters of legal action that must be considered by a notary in carrying out his duties. Habib Adjie stated that supervision of the implementation of the notary's office with the size of the notary's office rules is intended so that all provisions of the notary's office rules can be obeyed by the notary, but if a violation occurs, the Notary Supervisory Board can impose sanctions on the notary concerned.¹⁴ Everyone who feels aggrieved over that legal status is to sue a notary for reimbursement of costs, compensation and interest. The right to sue is a civil right of a person. Because this right is included in the civil realm, it is not the power of the Notary Supervisory Board to examine the issue of self-protection clauses if there are demands for reimbursement of costs, compensation and interest as a result of the Notary Supervisory Board being a State Administrative Agency and the product being a State Administrative Decree (KTUN).). Thus, law enforcement by the Notary Supervisory Board is related to all notary administration norms that must be obeyed by a notary in exercising his position as a notary.¹⁵

The role of the Notary Supervisory Board against falsification of documents by a notary in making authentic deeds in Kendari City is attribution authority originating from Legislation. The Notary Supervisory Board's role is to conduct examinations of alleged violations of behavior and performance of the Notary's office and to impose sanctions if proven guilty. In the final lawsuit decision, the

¹⁴Habib Adjie. (2017). Understanding the Notary Supervisory Board and the Bandung Notary Honorary Council: Refika Aditama, p. 22.

¹⁵Habib Adjie. (2011). Notary Supervisory Council As State Administrative Officials. Bandung: Refika Aditama. Thing. 7

Notary was only sentenced to pay an amount of fees, and was not sentenced to criminal penalties like the other defendants, because in the trial it was not proven that he was involved in an unlawful act with the defendants, but due to his lack of caution in issuing the GMS deed resulted in The plaintiff suffered a loss of approximately 200 billion.

This case of document falsification also made deed Number 75 of 2017 made by a Notary invalid, non-binding and null and void. Cancellation of the notarial deed due to a false statement submitted by one of the parties. If there is a letter or document that has been used as a requirement in making a deed made before a notary, it is found to be fake and has been terminated in a criminal case, the legal consequence is that the legal relationship that was originally binding on both parties is declared to have ended or disappeared. Henceforth, it becomes the obligation of the notary to formally delete the deed that regulates the legal relationship between the plaintiff and the defendant in the minutes of the notarial deed. In this case the notary has a formal interest in deletion in the minutes of the notary. So a notary has a formal interest in accordance with his authority to carry out an administrative action. The notary is placed as co-defendant because there is an error in the product of the deed which is not his fault.¹⁶The notary in the case of document forgery in Kendari above, aside from being a co-defendant, the notary is also a witness.

The Notary Supervisory Board plays a very important role in preventing notaries from acting beyond their authority in order to maintain the authenticity value of an authentic deed so that it is not degraded into an underhanded deed. Therefore, the notary's supervision should regulate and control the standardization of implementation procedures stipulated by the Notary Law to protect the honor of the notary's position.¹⁷Thus, this supervision is basically a form of legal protection for the Notary himself so that every Notary in behaving and acting, both in carrying out his position and outside his position is always in the corridor of law.¹⁸

The existence of a supervisory institution as contained in the UUJN, and ideally implementing it. The position of a Notary Public is a position that must be carried out in a trustworthy manner, upholds honesty, thoroughness and thoroughness, is independent, not bound and dependent on other parties, neutral and does not take sides, and the position can be carried out professionally. In this regard,

¹⁶I Gusti Ngurah A. Position of Notary as Co-Defendant in Civil Cases. *Journal of Legal Horizons*. Volume 13 Number 1 April 2022. p.56

¹⁷Yulies Tiena et al., Building an Ideal Model of Notary Supervision. *Journal of Legal Matters*. Volume 44 Number 4 (2015). Thing. 447

¹⁸Purwantoro et al., The Role of the Notary Regional Supervisory Board and the Notary Honorary Council on the Development and Supervision of Notaries. *Recital Reviews*. Volume 1 Number 2 (2019). p.11.

finally a notary is a service position and provides wholehearted community assistance based on fair legal certainty.¹⁹

3.2. Responsibilities of a Notary Who Falsifies Documents in Making Authentic Deeds in Kendari City

The responsibility of a Notary as a Public Official who makes a deed if there is a legal problem with a deed according to Act No. 2 of 2014 Concerning the Position of a Notary, the UJUN stipulates that when a Notary in carrying out his/her duties is proven to have committed a violation or legal problem in the deed he made, the Notary can subject to or being sanctioned, in the form of civil, administrative, and code of ethics for Notary positions, and these sanctions have been regulated in such a way, both previously in the PJN, and now in the UJUN and the Notary Code of Ethics, and do not stipulate criminal sanctions against Notaries . In practice, it is found that a legal action or violation committed by a notary can actually be subject to administrative or civil sanctions or a code of ethics for the position of a notary. but then withdrawn or qualified as a crime committed by a Notary. The qualification relates to aspects such as:²⁰

1. Certainty of day, date, month, year and facing time.
2. Parties (who are) facing the Notary.
3. Facing signature.
4. The copy of the deed does not match the minutes of the deed.
5. There is a copy of the deed, without the minutes of the deed being made.
6. The minutes of the deed were not completely signed, but the minutes of the deed were issued.

If these aspects are proven to have been violated by a Notary, then the Notary concerned may be subject to civil or administrative sanctions or these aspects constitute limitations which, if proven, can be used as a basis for imposing administrative sanctions and civil sanctions against the Notary, but it turns out that the on the other hand such limitations are taken or resolved criminally or used as a basis for criminalizing a notary on the basis that a notary has made a fake letter or forged a deed with the qualifications of a crime committed by a notary.

Imposition of criminal sanctions against Notaries can be carried out as long as the limitations as mentioned above are violated, meaning that in addition to fulfilling the formulation of violations mentioned in the UJUN, the Code of Ethics for the Position of Notaries must also fulfill the formulation mentioned in the Criminal Code. If a notary's action fulfills the formulation of a crime, but if it turns

¹⁹Irawan Arief. Sri Endah Wahyuningsih. The Role of a Notary as a Witness in the Criminal Justice Process. Deed Journal. Volume 4 Number 3 September 2017. p.382

²⁰Habib Adjie. (2013). Civil and Administrative Sanctions Against Notaries as Public Officials. Bandung: Refika Aditama, p.120

out that it is based on UUJN and according to the notary supervisory board's assessment it is not a violation, then the notary concerned cannot be sentenced to a criminal sentence, because the criterion for assessing a deed must be based on UUJN and the code of ethics for notary's position. .

Even though UUJN does not regulate the criminalization of notaries, it does not mean that notaries are immune to criminal law. Notary Criminal Cases have occurred in Semarang as stated in the Semarang District Court Decision Number 676/Pid.B/2016/PN.Smg, where Notary S was proven to have committed the act of falsifying an authentic deed together. Notary S was sentenced to imprisonment for 8 (eight) months.²¹

The occurrence of punishment against a Notary based on a deed made by or before a Notary as the output of the implementation of the duties of a Notary's position or authority, without regard to legal regulations relating to the procedure for making deeds and only based on the Criminal Code alone, indicates that there has been a misunderstanding or interpretation of the Notary's position and Notary deed as evidence in Civil Law.²²

Criminal sanctions are *ultimum remedium*, namely the last remedy, if sanctions or measures in other branches of law do not work or are deemed to be ineffective. Therefore its use should be limited. If there is another way, don't use criminal law. Examination of violations committed by a Notary must be carried out in a holistic-integral manner, by looking at the external, formal, and material aspects of the Notary's deed, and the implementation of the duties of a Notary's position in accordance with the Notary's authority, in addition to being based on the legal rules governing acts of violation committed by a Notary, also need to be combined with the reality of Notary practice.

In this regard, it is necessary to have a serious error (*hard schuldrecht*) for actions related to work in the field of science (*wetenschappelijke arbeiders*) such as a Notary. A notary is not a person who makes deeds or is a person who has a job making deeds, but a notary in carrying out his/her duties is based on or equipped with various legal knowledge and other sciences that must be mastered in an integrated manner by a notary and deeds drawn up before or by a notary have position as evidence, thus the Notary must have good intellectual capital in carrying out the duties of his position. Examination of a notary is inadequate if it is carried out by those who have not studied the world of notaries,

The basic principle of a crime for a notary is that if a notary commits a deviation from a deed he made, causing a criminal case, the notary must be criminally responsible for what he has done. Criminal responsibility arises with the

²¹Danar Setyo Wibowo. Liability of Notaries in Criminal Cases Relating to Deeds Made According to Law Number 2 of 2014 Concerning the Position of Notary. Law Thesis. 2019. Unissula. Semarang. Thing. 109

²²Sudarto. (1988). Criminal Law I. Agency for Provision of Lecture Materials at the Faculty of Law, Diopnegoro University. Semarang. Thing. 13

continuation of objective reproach for actions that are declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to punishment for their actions.

If a notary is proven guilty of committing a crime, the Notary Supervisory Board will propose to the Minister of Law and Human Rights to revoke his operational license. The sanctions given to the naughty notary are not only those who commit serious crimes, because even if they are sentenced to probation, they will be dealt with strictly, namely revocation of their license. Dismissal of a Notary is not only against the law, but can also be the result of committing other disgraceful acts, such as violating religious norms, moral norms and customary norms, all of which will humiliate the honor and dignity of the notary's position.

According to the theory of liability, the principle of responsibility based on fault of liability is a fairly general principle applicable in criminal and civil law. In the Civil Code, especially articles 1365, 1366 and 1367, this principle is firmly adhered to. This principle states that a person can only be legally held accountable if there is an element of error that he has committed. The notary is criminally responsible when in the process of proving that the notary is proven to have committed a crime or mistake.

Responsibility which owned by a Notary adheres to the principle of responsibility based on error (based on fault of liability), in making authentic deeds, the Notary must be responsible if the deed he made contains an error or intentional violation by the Notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The notary concerned cannot be held accountable, because the notary only records what was conveyed by the parties to be included in the deed. False statements submitted by the parties are the responsibility of the parties.²³

Notarial deed which is null and void cannot be asked to provide reimbursement of costs, compensation and interest. Reimbursement of costs, compensation and interest can be sued against a notary based on the notary's legal relationship with the parties against the notary. If there are parties who feel aggrieved from the deed drawn up by a Notary, then the person concerned can directly file a civil claim against the Notary so that the Notary can be held responsible civilly for the deed he made. Claims for reimbursement of costs, compensation and interest against the Notary, not based on the changed position of evidence due to violation of certain provisions in UUJN, but based on the legal relationship that occurred between the Notary and the parties who appeared before the Notary.

²³Andi Mamminanga. Implementation of the Authority of the Regional Notary Supervisory Council in the Implementation of the Notary's Duties based on UUJN. Thesis. Gajah Mada University Faculty of Law. Yogyakarta. 2008. p. 32.

4. Conclusion

The role of the Notary Supervisory Board against falsification of documents by a notary in making authentic deeds in Kendari City is attribution authority originating from Legislation. The Notary Supervisory Board's role is to conduct examinations of alleged violations of behavior and performance of the Notary's office and to impose sanctions if proven guilty. In the case of forgery of documents in Kendari above, apart from being a co-defendant, the Notary is also a witness. In a lawsuit involving a Notary, the Regional Supervisory Council is tasked with receiving reports, then followed by an examination by the Regional Supervisory Council, as well as imposition of sanctions if proven guilty by the Central Supervisory Council. After this case, the Notary received guidance from the Notary Supervisory Board so that cases like this do not recur. The responsibility of a notary who falsifies documents in making authentic deeds in Kendari City is a responsibility that adheres to the principle of responsibility based on fault (based on fault of liability), meaning that the notary must be responsible if the deed he made contains an error or intentional violation by the notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The notary concerned cannot be held accountable, because the notary only records what was conveyed by the parties to be included in the deed. False statements submitted by the parties are the responsibility of the parties. The notary in this case was not convicted of a crime because during the trial there was no evidence that the notary had participated in the crime with the suspects. The notary only makes authentic deeds based on documents from the suspect, therefore based on this principle, it is the parties who must be responsible, because the notary only records what the parties convey.

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