

Rechtvacuumli Protection for Notaries in Carrying Out Their Duties in Batam City

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Abstract. *Notaries have an important function as public officials, this is because Notaries are needed in making authentic deeds for the purpose of proving the recognition of ownership rights to an object in civil law. This important position of Notaries is not in line with the existence of clear legal protection for Notaries in carrying out their duties and responsibilities as public officials. The type of research in this thesis is a type of sociological or empirical legal research that includes legal identification and legal effectiveness, empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in the community. Based on the existing study, it can be concluded that the Implementation of Notary protection when carrying out their duties in Batam City has not yet been realized because there is no clear mechanism for protecting Notaries when carrying out their duties and responsibilities.*

Keywords: *Duties; Notary; Protection; Rechtvacuum.*

1. Introduction

Notary as a Public Official has the scope of duties of carrying out the Notary's position, namely making evidence desired by the parties for a certain legal action, and the evidence is within the Civil Law level, and that the Notary makes a deed because there is a request from the parties who appear, without a request from the parties, the Notary will not make any deed, and the Notary makes the intended deed based on evidence or information or statements of the parties stated or explained or shown to or before the Notary, and then the Notary frames it externally, formally and materially in the form of a Notarial deed, while still adhering to the legal rules or procedures or procedures for making deeds and legal rules relating to the legal action in question which are

stated in the deed.¹

The importance of the role of a Notary in making civil evidence in this case an Authentic deed, then the Notary in carrying out his duties must always act carefully, impartially, carefully in checking the facts and important documents shown to the Notary, listening to statements and recording statements from the parties. However, in practice, there are still many fake documents and even false statements from the parties/clients which have an impact on losses borne by the Notary as well, even becoming a loophole in criminal law for the Notary, when problems and disputes arise. So that the Notary is summoned and asked for information as a witness, this can be detrimental to the Notary.²This can be seen in the case of decision Number 2765 K/Pdt/2015, in the decision Notary Y who is located in Unit #R3- B. 3A Nagoya Hill Superblock, Nagoya 29432, Batam City became the defendant in a land embezzlement case. The case began when the plaintiff gave his power of attorney to J as Defendant II to sell his land plot, because the husband and wife relationship between Plaintiff I and Defendant II was not harmonious and was in the process of divorce, while Plaintiff I was domiciled in Jakarta at that time, then with the pretext that Defendant II was suspicious that Plaintiff I would soon remarry so that he was worried that he would no longer take care of the interests of the Foundation and the school that had been established on the plot, Defendant II (who at that time served as the administrator of the Foundation) admitted that based on good intentions he asked Plaintiff I to transfer the plot to him by giving him power of attorney to sell. Initially, Plaintiff I objected to Defendant II's request to grant power of attorney to sell, but Defendant II assured that the real purpose of granting the power of attorney to sell was not to sell the plot, but merely to transfer the right to sell that was originally owned by Plaintiff I as the owner, so that the interests and continuity of the foundation and school activities would remain guaranteed even though Plaintiff I had moved domicile. Based on the explanation and good intentions of Defendant II, Plaintiff I finally agreed to grant power of attorney to Defendant II, after Defendant II received the power of attorney to sell the plot, Defendant II did not take steps and actions that could guarantee the continuity of the foundation and school operations as he had argued when requesting power of attorney to sell the plot from Plaintiff I, but instead Defendant II began to show attitudes and actions that were counterproductive and detrimental to the interests of the foundation in the form of not carrying out his responsibilities as a Manager, not being transparent in managing the foundation's finances, and

¹Habib Adjie, 2007, Indonesian Notary Law: Thematic Interpretation of Law Number 30 of 2004 Concerning the Position of Notary, PT Refika Aditama, Surabaya, p. 24.

²Habib Adjie, 2010, Cancellation and Revocation of Notarial Deeds, Refika Aditama, Surabaya, p.19.

actually refusing the presence of an independent auditor who had been specifically appointed to audit the foundation's finances during Defendant II's management. The Plaintiff was surprised to hear the explanation of Defendant III stating that the land and school building had been purchased by Defendant III from Defendant II for Rp500,000,000.00 (five hundred million rupiah). That based on the results of Plaintiff I's investigation, it turned out that without the knowledge and permission of the Plaintiffs, on May 3, 2012 (namely before Plaintiff I revoked the power to sell to Defendant II) Defendant II had made a sale and purchase agreement and power of attorney over the land to Defendant III with the receipt of payment of Rp500,000,000.00 (five hundred million rupiah) based on the Deed of Sale and Purchase Agreement and Power of Attorney dated May 3, 2012 Number 01 made by Defendant I. Defendant II who has separated and is no longer related to each other regarding daily assets with Plaintiff I, has never shared or handed over the proceeds from the sale of the a quo plot in the amount to the plaintiff. The Sale and Purchase Agreement and Power of Attorney dated May 3, 2012 Number 01 made by Defendant I, namely Notary Y specifically in terms of returning the purchase money of Defendant III, as well as all compensation or fines in any form and from any party that may arise due to the cancellation of the sale and purchase agreement. The actions of Defendant I who made and issued the Deed of Sale and Purchase Agreement and Power of Attorney dated May 3, 2012 Number 01 which contained information/statements that were incorrect and contrary to the law and the requirements for the validity of an agreement; and Defendant II who had made a sale and purchase agreement and power of attorney to transfer the plot to Defendant III by receiving a certain amount of payment without any basis for authority for that; and the actions of Defendant III who locked the building above the plot and prohibited entry for students for the teaching and learning process; is an act that harms the subjective rights of Plaintiff I, Plaintiff II, Plaintiff III and the public in general, so it should be declared unlawful. The result of the actions of the defendants is that they have caused disturbance and loss to the Plaintiff, where the loss is material in the form of costs incurred by Plaintiff II to open and repair the fence closed by Defendant III amounting to Rp500,000.00 (five hundred thousand rupiah), paying security/security to anticipate thuggery by people ordered by Defendant III to date reaching Rp12,000,000.00 (twelve million rupiah), making banners and billboards containing persuasive matters to ease the concerns of students, guardians, and the public in general about the guarantee of the implementation of the teaching and learning process, amounting to Rp4,000,000.00 (four million rupiah). So that the total material loss amounting to Rp16,500,000.00 (sixteen million five hundred thousand rupiah) should be charged to Defendant I, Defendant II and Defendant III jointly and

severally to be paid to the Plaintiff.³Based on the author's interview with Notary Y, it is known that Notary Y only carried out his duties in making the deed of sale and purchase, while there was a problem between the plaintiff and the defendant J, Notary Y did not understand and know about it. As a result of the plaintiff's actions, Y lost several of his clients.⁴

In relation to the issue of minimal protection for Notaries, this is due to the absence of a clear mechanism regarding the protection of Notaries and matters for which Notaries can be held accountable when carrying out their duties. The absence of these two aspects also occurs in Law Number 2 of 2014 concerning the Position of Notary.

2. Research Methods

The type of research used in this study is legal research.sociological or empirical which includes legal identification and legal effectiveness, empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in society.⁵

3. Results and Discussion

3.1. Implementation of Notary Protection When Carrying Out Their Duties in Batam City Currently

Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) states that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. That in the article, a Notary is a position that has been regulated in laws and regulations.⁶Notaries as a profession whose duties or authorities are granted by law, should use the principle of caution to avoid errors or negligence that may occur. When a notary is wrong or negligent in carrying out his/her duties by violating existing laws and regulations, then the notary should be

³ Decision Number 2765 K/Pdt/2015, accessed via <https://bangunan3.mahkamahagung.go.id/direktori/bangunan/1542e0a336dbb04123219afc4387fde0.html>, on May 12, 2023.

⁴Personal interview with Notary Y as the Notary who made the deed in the case as referred to in Decision Number 2765 K/Pdt/2015, the interview was conducted on October 11, 2023.

⁵Mukti Fajar and Yulianto Achmad, 2010, Dualism of Legal Research: Normative and Empirical, Pustaka Pelajar, Yogyakarta, pp. 153-154.

⁶Annisa, Yanis Rinaldi, Teuku Abdurahman, "Responsibility of Notaries Who Do Not Register and Report Wills to the Central Will Register", Syiah Kuala Law Journal, Volume 3 Number 1 April 2019, p. 2.

responsible for his/her errors or negligence.⁷

Nowadays, there is a lack of awareness of notaries to be directly responsible for the actions they have committed. So to make the Notary aware, they must use the judicial institution, by making the Notary a defendant or co-defendant for committing an unlawful act. Lawsuits regarding compensation are related to material that is then regulated in various laws and regulations, one of which is Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014, in addition it is also based on Article 1365 of the Civil Code. However, with the birth of various laws that specifically regulate claims for compensation, there has been a change in the application of Article 1365 of the Civil Code.

Notaries in carrying out their duties cannot be separated from the risk of being involved in legal cases which will ultimately result in complaints and reports of Notaries and even lawsuits in court. This is one of them that happened in Batam City, one of the Notary employees in Batam City, namely FM, falsified documents related to land ownership in Batam City. The original land certificate document by FM who is an employee of one of the Notaries in Batam City was falsified and pawned by FM, FM's action made him a profit of Rp. 10,000,000.00 where it is known that FM has done his actions 10 times. FM's action was discovered when J who at that time wanted to pawn his land certificate to the Bank was declared that his certificate was fake, J who then took care of his certificate which was declared fake by the Bank to BP Batam, later found out through his investigation that FM as a Notary employee who was entrusted by the Notary where FM worked actually committed an unlawful act, namely by falsifying J's land ownership certificate which he should have taken care of with trust. As a result, the Notary where FM worked was also subject to a criminal lawsuit, because he was considered to be involved in the fraud. Through a family approach, the Notary where FM worked then confirmed and agreed to be responsible for FM's actions and explained that he was not involved in FM's case, the police investigation also stated that the Notary where FM worked was not proven to have committed an unlawful act and was not involved in FM's actions. Based on these two things, J did not continue his complaint to the police.⁸

The responsibility of a Notary as a public official (*openbaar ambtenaar*) is the responsibility for actions that emphasize work that requires technical skills

⁷Aris Yulia, "Notary Profession in the Industrialization Era from the Perspective of Pancasila Transcendence", *Jurnal Law and Justice*, Volume 4 Number 1, April 2019. p. 57.

⁸Personal interview with AKBP Rama Patara as Head of Sub-Directorate II of the Criminal Investigation Directorate of the Riau Islands Police, on May 12, 2023.

and special expertise in the field of making authentic deeds professionally and the material truth of the deeds made. Having unquestionable quality of knowledge in serving clients and being able to work independently. The legal responsibility of a Notary in carrying out professional duties is bound by the rules of law that regulate, and is required to be able to master all applicable legal rules. The responsibility of a Notary as a Public Official relates to material truth, namely:

- a. The Notary's civil responsibility for the material truth of the deed made;
- b. The notary's criminal responsibility for the material truth of the deed made;
- c. The responsibility of a Notary based on the Notary's Job Regulations for the material truth of the deed made;
- d. The responsibility of a notary in carrying out his/her duties is based on the notary's code of ethics.

The implementation of the duties and position of a Notary is based on the integrity and high honesty of the Notary, the results of work in making deeds and maintaining protocols are very important in the application of evidentiary law, as authentic evidence concerning the interests of justice seekers, both personal interests and the interests of a business, so that the implementation of the duties and position of a Notary, must be supported by moral faith that can be accounted for. The demands of the function and role of a Notary, a Notary is needed who is qualified in knowledge, deeds, faith, and piety and upholds the dignity of the Notary in providing legal services to the community. Notaries provide good or professional services, because Notary services are considered very important. If the Notary is unable to provide good or unprofessional services, there will be many parties harmed as a result of errors or negligence that have been made by the Notary. When the rules of law are obeyed, the risk for the Notary to face a lawsuit or lawsuit is very small. However, lately it is often found that Notaries are facing legal problems, such as being summoned by the Police, either in their capacity as witnesses or being indicated as suspects, and as parties being sued in court in civil cases. Notaries who violate the law in carrying out their duties either intentionally or through negligence. The purpose of making a deed before a Notary is as strong evidence if at any time there is a dispute between the parties or there is a civil lawsuit or criminal claim from another party. If a civil lawsuit or criminal claim occurs from one of the parties, it is possible that the Notary will be involved in the problems of the parties in dispute regarding the deed made by the Notary. It is not uncommon for parties who come to the Notary to request a deed to be made, the parties use fake identities or fake letters or documents, so that the Notary who tries

to help formulate the wishes of the party in a deed actually becomes involved in legal problems and is even accused of participating or helping to commit a crime in the process of making the deed, even though the Notary is not authorized or obliged to check the authenticity of all documents submitted by the parties to the Notary. This is a strong warning for Notaries to be careful in carrying out their duties as Public Officials in making authentic deeds.⁹

The implementation of supervision is the task of the Notary Supervisory Board in Pekanbaru City in accordance with Article 1 paragraph (7) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.03-HT.03.10 of 2007 concerning the Taking of Minutes of Deeds and Summoning Notaries, which states that the Regional Supervisory Board is a body that has the authority and obligation to carry out supervision of Notaries domiciled in the Regency/City area. Guidance is part of supervision. If one of the two is missing, its function will not run properly. In this discussion, the area is Padang City. Based on the results of an interview with the Secretary of the Regional Supervisory Board, the formation of Notaries in Pekanbaru City currently amounts to 156 (one hundred and fifty-six) active people. Philosophically, after the enactment of the Notary Position Law, the Regional Supervisory Board (MPD) took over the duties of the District Court which supervises, examines and imposes sanctions on Notaries at the regency/city level. MPD also supervises Notaries related to summons or lawsuits including permits from MPD. The supervisory function carried out by the Regional Supervisory Council is more of an administrative nature.¹⁰In reality, the Notary Supervisory Board in Batam City has not been able to protect Notaries who are involved in legal cases, even though it must be understood that a Notary cannot be arbitrarily reported by the parties without a mechanism for proving ethics first. It often happens that Notaries do not intentionally commit acts that violate the law, only because one of the parties is facing him. For example, the case above shows that a Notary is vulnerable to legal cases for actions that he should not be held accountable for. Before being held accountable as a citizen who can be held criminally or civilly, a Notary who is a public official has the right to be protected by the Notary Law for the responsibilities and duties he carries out, therefore the accountability that should be carried out first against a Notary who is accused of violating the law is through administrative accountability

⁹Erllys, Fadlan, Ramon Nofrial, Soerya Respationo, and Erniyanti, "Legal Analysis of Notary's Responsibility for the Criminal Act of Forgery of Authentic Deeds (Research Study in Batam City)", *Unes Law Review*, Vol. 6, No. 1, 2023, p. 3747.

¹⁰Personal interview with Wahyu Hidayat as a Notary/PPAT in Batam City, on May 12, 2023.

related to his duties and responsibilities.

The administrative responsibilities of a notary are regulated in detail in the UUJN. Notaries are assigned and responsible for registering and validating (waarmerken and legalization) letters/deeds made underhand. If these provisions are not heeded, there will be legal consequences, the deed made by the notary can become a deed underhand and the deed can be canceled or null and void by law. The administrative responsibility of a notary will arise when the notary's obligations are not heeded as they should be. The administrative responsibility of a notary can be requested through a notary institution/organization, in contrast to criminal and civil responsibility which must be carried out through the court. However, the court through its decision can forward it to the notary organization to follow up on the decision that has been issued by the court. Determining the existence of a notary's administrative responsibility is that there must be an act of the notary that can be punished or his actions that have violated the elements expressly regulated in the UUJN. An authentic deed can be qualified as violating administrative requirements if the making of the deed is not in accordance with the provisions of Article 39 and Article 40 of the UUJN. Article 39 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that:

- (1) The applicant must meet the following requirements:
 - a. at least 18 (eighteen) years old or married; and
 - b. competent to carry out legal actions.
- (2) The person appearing must be known to the Notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of carrying out legal acts or introduced by 2 (two) other persons appearing.
- (3) The introduction as referred to in paragraph (2) is stated expressly in the Deed.

Article 40 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that:

- (1) Every Deed read by a Notary must be attended by at least 2 (two) witnesses, unless statutory regulations specify otherwise.
- (2) Witnesses as referred to in paragraph (1) must meet the following requirements:
 - a. at least 18 (eighteen) years old or previously married;
 - b. competent to carry out legal actions;

- c. understand the language used in the Deed;
 - d. can affix signature and initials; and
 - e. not having a marital relationship or blood relationship in a straight line upwards or downwards without limitation of degree and lateral line up to the third degree with the Notary or the parties.
- (3) Witnesses as referred to in paragraph (1) must be known to the Notary or introduced to the Notary or have their identity and authority explained to the Notary by the person appearing. (4) The introduction or statement regarding the identity and authority of the witness is stated expressly in the Deed.

Based on the existing explanation, it is clear that a Notary in making his legal product, namely a deed, has various formal requirements, so that he is able to avoid the Notary from actions that can be considered an act that benefits others or himself unlawfully. In addition, a Notary is also threatened with sanctions of dismissal if proven to have committed a serious crime. This is in accordance with Article 13 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that:

A notary is dishonorably dismissed by the Minister because he/she has been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more.

Article 12 of the UUJN clearly states that:

A notary shall be dishonorably dismissed from his/her position by the Minister upon the recommendation of the Central Supervisory Board if:

- a. declared bankrupt based on a court decision that has permanent legal force;
- b. being under continuous guardianship for more than 3 (three) years;
- c. committing acts that degrade the honor and dignity of the office of Notary; or
- d. commit serious violations of the obligations and prohibitions of office

Administrative sanctions for Notaries as regulated in Article 71 of the UUJN have been determined as follows:

- a. Verbal reprimand;
- b. Written warning;
- c. Temporary suspension;
- d. Honorable discharge;
- e. Dishonorable discharge.

The imposition of sanctions as outlined above against notaries who violate the provisions in making authentic deeds is adjusted to the quantity and quality of violations committed by the member. The imposition of sanctions in the form of temporary dismissal as well as sanctions for dismissal or dishonorable dismissal for violations as referred to in the UUJN is carried out gradually and continuously. Sanctions against notaries in the form of temporary dismissal from their positions are intended so that notaries do not carry out their duties for a while before sanctions in the form of honorable dismissal or dishonorable dismissal are imposed on the notary. The imposition of this sanction can end in the form of reinstatement to the notary to carry out their duties again or be followed up with sanctions for honorable dismissal or dishonorable dismissal. To provide certainty, the temporary dismissal must have a time limit, so that the fate of the notary is not hanging. This temporary dismissal sanction is real coercion, while sanctions for honorable dismissal or dishonorable dismissal fall into the realm of sanctions for revoking favorable decisions.

The existence of administrative sanctions and examination mechanisms up to the administrative determination of Notaries by the MPN in the region in accordance with Article 71 of the UUJN, can then be the initial basis for a criminal or civil lawsuit when the deviation from the Notary's code of ethics is proven to be related to a criminal act or violation of civil law. So that Notaries also have criminal and civil responsibilities.

Notaries in connection with their authority, can be burdened with responsibility for their actions in the form of making authentic deeds that do not comply with applicable provisions or are carried out unlawfully. In relation to this authority, if a notary takes action outside the specified authority, then the notarial deed is not legally binding or cannot be implemented. Parties who feel aggrieved by the notary's actions can sue the notary in a civil manner to the District Court or Religious Court. The Civil Code also regulates civil legal responsibility. This responsibility arises from the law (as an unlawful act) or from agreements, as with the Civil Code in other countries in the Continental European legal system. Thus, the model of legal responsibility that arises due to unlawful acts according to the Civil Code is:

- a. Responsibility with elements of error (intention and negligence), as contained in Article 1365 of the Civil Code.
- b. Responsibility with an element of error, especially the element of negligence, as contained in Article 1366 of the Civil Code;
- c. Absolute liability (without fault) in a very limited sense is found in Article 1367 of the Civil Code.

In addition to those who must be accounted for, there are also civil sanctions that must be accepted, namely sanctions imposed on errors that occur due to default or acts that violate the law *onrechtmatige daad*. Civil sanctions can be in the form of reimbursement of costs, compensation and interest. Notaries will be asked for sanctions if they receive a lawsuit from the parties who feel aggrieved because the deed in question is legally flawed, so that it has the power of proof as a private deed or is void by law. Notarial deeds have perfect evidentiary power, but if certain provisions are violated, their evidentiary value will be degraded to a private deed. Article 1869 of the Civil Code determines the limitations of notarial deeds that have the power as private deeds can occur if they do not meet the following provisions:

- a. The lack of authority of the official concerned;
- b. Does not have a relevant public official;
- c. Defective in its shape.

A private deed has perfect evidentiary value as long as the parties acknowledge it. If the parties violate certain provisions as stated in the UUJN, then the deed in question still has perfect evidentiary power and binds the parties. A deed that is declared null and void by law, then the deed is considered to have never existed or never been made, something that has never been made cannot be used as the basis for a claim in the form of compensation for losses which is usually in the form of reimbursement of costs, compensation and interest. A notarial deed that is null and void by law cannot be requested to provide reimbursement of costs, compensation and interest. Reimbursement of costs, compensation and interest can be sued to a notary based on the legal relationship of the notary with the parties who appear before the notary. If there is a party who feels aggrieved by the deed made by the notary, then the person concerned can directly file a civil lawsuit against the notary so that the notary can be held civilly responsible for the deed he made. Claims for reimbursement of costs, damages and interest against a notary are not based on the status of evidence that has changed due to violating certain provisions in the UUJN, but are based on the legal relationship that occurs between the notary and the parties who appear before the notary. Even though the notary has retired, the notary must still be civilly responsible for the deeds he has made. In practice, notaries are often made or placed as defendants by other parties, who feel that the legal actions he has taken in the deed are categorized as actions or legal acts of a notary together with other parties who are also mentioned in the deed. In the context of notarial law, the notary's task is only to formulate the wishes of the parties in the form of an authentic deed, by paying attention to applicable law. Based on this substance, it is clear that if the deed made by

the notary is problematic by the parties themselves, then the notary does not need to be involved in this matter, because the notary is not a party to the deed. The denial can be done by filing a civil lawsuit against the notary in court, and the parties are required to prove the things they want to deny, while the notary is required to defend these aspects. In this case, it is necessary to understand the legal principles of notaries, namely that notarial deeds are authentic deeds, where the deed has perfect evidentiary power, so that if there are people or parties who want to deny it or state that the deed is not true, then the party is obliged to prove their assessment or statement in accordance with the applicable legal regulations. In accordance with the legal construction of the position of notaries in Indonesia, The first is that the Notary is not a party to the deed, and the notary only formulates the wishes of the parties so that their actions are stated in the form of an authentic deed, namely a deed made by and before a notary. Based on such a legal construction, it is very difficult to accept logically if a notary is made a defendant in relation to a deed made before a notary. The notary has the authority to carry out his/her duties as long as the authority is attached to him/her. The limit of the notary's liability is as long as/as long as the notary has the authority. Notaries who are on leave, retired and who have been dismissed can no longer be held accountable, because they no longer have the authority. In practice, it is often found that if a notarial deed is disputed by the parties or other parties, the notary is often also drawn as a party who participated in or helped to commit a crime, namely providing false information in the notarial deed. With this, it raises confusion, is it possible that the notary intentionally made a mistake or was negligent together with the parties in making a deed that was intended to commit a crime. If a notary is proven to have violated this, then it is mandatory for him to be given a sanction. In relation to the above, to request information from a notary on a report from a certain party according to Article 66 of the UUJN, if the notary is summoned by the Police, Prosecutor's Office, or Judge, then the agency that wants to summon is required to request approval from the Notary Honorary Council.

When a person is not permitted to be summoned, the Police or Prosecutor's Office will summon the witnesses to the notarial deed listed at the end of the deed. This is actually not in accordance with the applicable notarial law, because the witnesses are included in the formal aspects of the Notary which are an inseparable part of the notarial deed itself. The UUJN does not regulate criminal sanctions against notaries, so if a criminal violation occurs by a notary, the sanctions contained in the Criminal Code can be imposed, with the note that the notary's criminalization is carried out with the

following limitations:¹¹

- a. There is a legal action by a notary against the external, formal, material aspects of a deed that is deliberate, full of awareness, and planned that the deed to be made before a notary or by a notary together with the parties appearing is used as a basis for committing a crime. The evidentiary value of a notarial deed from the external aspect is that the deed must be seen as it is, if someone considers the notarial deed not to meet the requirements as a deed, then the person concerned is obliged to prove it. While a notarial deed in the formal aspect must provide certainty that an event and fact stated in the deed was actually carried out by a notary and explained by the parties appearing at the time stated in the deed. In terms of the material aspect, certainty about the material of a deed, that what is stated in the deed is valid evidence against the parties who made the deed.
- b. There is a legal action by a notary in making a deed before or by a notary which when measured based on UUJN is not in accordance with UUJN. 3) The notary's action is not in accordance according to the authorized agency to assess the actions of a notary, in this case the Notary Supervisory Board.

HD Stout states that authority is "The totality of rules relating to the acquisition and use of government authority by public law subjects in public legal relations".¹²Based on Article 16 and Article 54 of the UUJN and the theory of authority of HD. Stout, it can be understood that a Notary has authority that is not possessed by someone who is not a Notary. This authority is granted by Article 16 and Article 54. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Notaries do not have full authority to guarantee the truth of what is conveyed by the parties who appear before them, so that material and formal defects in the preparation of deeds based on false statements from the parties who appear before them are not the responsibility of the Notary as the maker of the deed. So that a lawsuit against a Notary when there is a defect when the parties provide information that is not true in civil law will result in *inobscurantist libel*, *obscuur libel* which means the plaintiff's lawsuit is unclear or its contents are dark (*onduidelijk*). Also called, an unclear lawsuit formulation. In fact, in order for the lawsuit to be

¹¹Habib Adjie (II), Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama, Bandung, 2008, p. 24.

¹²Ridwan HR., 2008, State Administrative Law, RajaGrafindo Persada, Jakarta, p. 110.

considered to meet the formal requirements, the grounds for the lawsuit must be clear and obvious or firm (*duidelijk*). This is because the Notary cannot ensure that the parties who appear before him and provide true information have told the truth before him. So that the proof against the Notary who is declared to have violated civil law can be said to be difficult when it is related to the implementation of his duties and responsibilities, because the Notary in carrying out his duties and responsibilities has been carried out based on a clear legal mechanism as regulated in the UUJN. Based on the dimensions of criminal law, a notary who is carrying out his duties cannot be immediately punished for an act that he did not commit. The reason for an action can be being punished and given misery to someone there is a system in criminal law that requires the fulfillment of the elements of *actus reus* and *mens rea*. In the Indonesian legal system, *actus reus* can be equated with the definition of a criminal act, while *mens rea* is an error that is part of criminal responsibility. Both of these requirements are absolute requirements for a person to be sentenced, this can be seen in the following scheme:¹³

Chart:

Sentencing Requirements

$\text{Criminal Act} + \text{Criminal Responsibility} = \text{Criminal}$

For the duties and responsibilities of a Notary as regulated in Article 16 of the UUJN, every Notary is threatened with administrative sanctions in the form of verbal warnings; written warnings; temporary dismissal; honorable dismissal; and dishonorable dismissal. However, in the UUJN, neither the Notary Supervisory Board, the Ministry of Law and Human Rights, nor the Indonesian Notary Association are given the obligation by the UUJN as a notary organization institution to protect Notaries when carrying out their duties and responsibilities.

According to Reinward as one of the Notaries/PPAT in Batam City, in 2022 there were around 37 Notaries who were subject to civil and criminal lawsuits, 15 people were subject to criminal lawsuits, while 20 people were subject to civil lawsuits, while 2 people were subject to ethical complaints to the Batam City MPD. Reinward then added that in 2023,

¹³ Hanafi Amrani and Mahrus Ali, *Criminal Responsibility System; Development and Implementation*, Raja Grafindo Persada, Jakarta, 2015, p. 75.

lawsuits and complaints against Notaries in Batam City experienced a not very high increase, there were 64 Notaries who were subject to lawsuits and complaints by the public, 30 people were subject to criminal lawsuits, 32 people were subject to civil lawsuits, and 2 people were subject to ethical complaints to the MPD.¹⁴

Table: Number of Cases Involving Notaries in Batam City in 2022-2023

Types of Notary Legal Cases Protocol Holders	Amount In 2022	Amount In 2023
Criminal Lawsuit	15 People	30 People
Civil Lawsuit	20 People	32 People
Complaint to MPD	2 persons	2 persons
Total number	37 People	64 People

Reinward added that during his career as a Notary in Batam City, the role of the Notary Supervisory Board in providing protection for Notaries when they are caught in a legal case while carrying out their duties, even though the Notary who is carrying out his duties is not proven guilty, is almost non-existent, the Notary concerned takes legal action himself to defend himself. The absence of regulations related to legal protection for Notaries when it occurs in carrying out their duties, shows that there has been legal uncertainty for the legal protection of Notaries in carrying out their roles and responsibilities. According to Apeldoorn, legal certainty has two aspects, first regarding the issue of the formation (bepaalbaarheid) of law in concrete matters. This means that parties seeking Justice want to know the law in specific matters before starting a case. Second, legal certainty means legal security. This means protection for the parties against legal arbitrariness.¹⁵Based on Apeldoorn's thinking, it is clear that Notaries in carrying out their duties do not have clear access to know the limits of their responsibilities that can be accounted for in terms of carrying out their roles and responsibilities as a Notary. In

¹⁴Personal Interview with Reinward as Notary/PPAT in Batam City, on May 12, 2023.

¹⁵Shidarta, 2006, *Morality of the Legal Profession: An Offering of a Framework for Thinking*, PT. REVIKA Aditama, Bandung, pp. 82-83.

addition, Notaries are also vulnerable to legal arbitrariness as a result of legal uncertainty in the regulation of Notary protection. This automatically violates Article 28D paragraph (1) of the 1945 NRI Constitution regarding equality before the law.

1. Obstacles and Solutions to the Problem of Notary Protection When Carrying Out Their Duties in Batam City Today

Based on the various existing realities, it is necessary to formulate several related solutions.obstacles to the implementation of the role and responsibilities of notaries in Batam City. The solutions in question are:

- a. Making provisions for the mechanism regarding the obligation to provide evidence by the Notary Supervisory Board at the regional level first, so that the determination of the MPN becomes the basis for the parties to file civil or criminal lawsuits. This is intended so that an in-depth study is carried out regarding the involvement and violations of the Notary's law when carrying out his duties and obligations, where the party with the most authority to examine and investigate the Notary's unlawful actions is the MPN.
- b. Making provisions regarding legal protection mechanisms for Notaries who are carrying out their duties and responsibilities.
- c. Making provisions regarding the regulation of acts that can be subject to sanctions, and the types of sanctions that can be imposed in relation to the implementation of the duties and responsibilities of a Notary.

4. Conclusion

The implementation of protection for Notaries when carrying out their duties in Batam City has not yet been realized because there is no clear mechanism for the protection of Notaries when carrying out their duties and responsibilities.

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