

Criminal Liability of Notaries in Corruption Crimes of Army Housing Mandatory Savings Funds

Fratiwy Muid

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
fratiwymuid.std@unissula.ac.id

Abstract. *This study aims to analyze the criminal liability of notaries involved in criminal acts of corruption, the legal implications for the deeds issued, and the structure and format of the Sale and Purchase Deed (AJB) that meets the requirements for validity, has binding force, and minimizes the risk of legal violations. This research method uses normative legal research with a statutory, case, and conceptual approach that is analyzed prescriptively. The results of the study indicate that (1) The criminal liability of Notaries in Decision Number 42-K/PMT.II/AD/XII/2023 is personal (individual liability) and is based on proof of intent (dolus) and involvement in criminal acts of corruption that are carried out jointly and continuously. Therefore, notaries are subject to principal penalties in the form of imprisonment, fines and additional penalties in the form of payment of compensation. (2) Criminalization of notaries does not immediately eliminate the validity of the deeds they make. The validity of a deed is determined by the fulfillment of legal requirements and its connection to a criminal act, so that the deed can only be cancelled or lose its evidentiary force based on a legal basis or court decision, while still providing protection to parties who act in good faith. (3) A Deed of Sale and Purchase (AJB) is a PPAT deed in the transfer of land rights. Notaries who also serve as PPAT are required to exercise their authority according to their respective positions and fulfill the procedures for making an AJB, including verifying the identity of the parties, the validity of the object, the completeness of the requirements, and the application of the principle of caution to minimize the risk of violations of the law.*

Keywords: *Corruption; Criminal; Liability; Notary.*

1. Introduction

Notary as officialsThe public has an important role in providing guarantees of

legal certainty and protection through the authentic deeds it creates.¹Carrying out the position of Notary requires high integrity, professionalism and neutrality, considering that every authentic deed produced has legal implications for the rights and obligations of the parties.²In carrying out their duties, notaries must adhere to the regulations stipulated in the UUJN and the Notary Code of Ethics. Violation of these provisions can result in a loss of professionalism and public trust in notaries, thus damaging the dignity and honor of the notary profession.³

A Notary's responsibilities are not limited to administrative and legal aspects, but also involve moral and ethical responsibilities in maintaining truth and substantial justice. However, in practice, abuse of authority is still found, resulting in the involvement of Notaries in criminal acts. One example can be found in the case registered with Number 42-K/PMT.II/AD/XII/2023. In this case, the Notary was proven to be involved in the criminal act of corruption of the Army Housing Compulsory Savings (TWP AD) funds for the 2019–2020 Fiscal Year along with AS as Director of PT Indah Berkah Utama and Brigadier General TNI (Ret.) YAK. The three of them misused the budget for housing land procurement in Karawang Regency, West Java, by using TWP AD funds amounting to IDR 66 billion when the funds should have been allocated for the provision of housing for Army soldiers.

The case was then decided by the Jakarta High Military Court II and read out in an open trial on June 25, 2025. Based on the verdict, the Panel of Judges stated that the Defendant, namely H. Tafieldi Nevawan, SH, MH, was legally and convincingly proven guilty of committing the crime of: "corruption carried out jointly and continuously". For his actions, the Defendant was sentenced to: (a). the principal penalty in the form of imprisonment for 7 years; (b). a fine of IDR 300,000,000.00 if the fine is not paid, it will be replaced with imprisonment for 6 (six) months; and (c) an additional penalty in the form of payment of compensation for state financial losses of IDR 1,643,457,500.00 which must be paid no later than 1 (one) month after the verdict has permanent legal force, and if not paid, the Defendant's assets will be confiscated and auctioned to cover it or, if insufficient, replaced with imprisonment for 2 (two) years.

The involvement of a Notary as a perpetrator of a criminal act is that legally, based on Article 13 of the UUJN, a Notary is dishonorably dismissed by the Minister because he is sentenced to imprisonment based on a court decision that

¹ Teguh Ariyanto and Sudarto, "Criminal Liability of Notaries in the Crime of Assisting in Ordering to Place False Information into an Authentic Deed," *Iblam Law Review* 4, no. 3 (2024): 150.

² Anugrah Yustica, Ngadino, and Novira Maharani Sukma, "The Role of Notary Professional Ethics as a Law Enforcement Effort," *Notarius* 13, no. 1 (2020): 61, <https://doi.org/10.61722/jinu.v1i4.1571>.

³ Ni Komang Sri Intan Amilia and I Gede Yusa, "Legal Consequences of Violations of Notary Obligations Regarding the Provisions of Article 3 Number 15 of the Notary Code of Ethics," *Acta Comitatus: Journal of Notary Law* 06, no. 03 (2021): 511.

has permanent legal force for committing a criminal act that is punishable by imprisonment of 5 (five) years or more.⁴ Therefore, a Notary in carrying out his/her duties must uphold the utmost caution in order to minimize the occurrence of violations or conflicts in the future.⁵

The involvement of a notary in a criminal act of corruption, as reflected in Decision Number 42-K/PMT.II/AD/XII/2023, not only results in criminal liability for the perpetrator but also raises broader legal issues. These issues include the basis for the criminal liability of a notary involved in a criminal act of corruption through participation, the status of the deeds they have drawn up, and the legal certainty for the parties who use those deeds. This condition indicates that criminal acts committed by a notary not only impact the perpetrator but also have the potential to affect the legal certainty of legal relationships arising from the authentic deeds they have drawn up.

The UUJN regulates the authority, obligations, prohibitions, and administrative sanctions for Notaries, but does not yet provide clear provisions regarding the legal consequences for authentic deeds made by Notaries who are later proven to have committed a criminal act of corruption. The legislation also does not explicitly regulate the limits of criminal liability for Notaries involved in criminal acts through participation (*deelneming*) or the criteria for determining whether a deed retains evidentiary force, is degraded, or can be declared null and void. This lack of clarity has the potential to give rise to differences in interpretation and legal uncertainty, particularly in providing protection to parties acting in good faith.

Based on these conditions, this study is important to examine the criminal liability of Notaries involved in criminal acts of corruption and the legal implications for the deeds they issue based on Decision Number 42-K/PMT.II/AD/XII/2023. The novelty of this study lies in the analysis that integrates the criminal liability of Notaries based on the concept of participation in criminal acts of corruption, the legal implications for the evidentiary power and validity of authentic deeds, and the formulation of the structure and format of the Sale and Purchase Deed (AJB) in PPAT practice that meets legal provisions, provides protection for parties with good intentions, and minimizes the risk of abuse of authority. Therefore, the purpose of this study is to determine and analyze the criminal liability of Notaries in the criminal act of corruption of the Army Housing Compulsory Savings Fund based on Decision Number 42-K/PMT.II/AD/XII/2023.

⁴ Nanda Yuliska and Rasji, "Implementation of Notaries Imposed Sanctions as Criminal Offenders," *Unes Law Review* 6, no. 2 (2023): 5591.

⁵ Ivana Budiani Oetomo and Pieter E Latumeten, "Notaries as Subjects of Criminal Law in the Indonesian Justice System," *Galuh Justisi Scientific Journal* 12, no. September (2024): 206.

2. Research Methods

This research is normative legal research that examines law as norms, principles, doctrines, and court decisions. The approaches used consist of the statute approach, the case approach, and the conceptual approach. Primary legal materials include laws and regulations in force at the time of the act and the case process, Decision Number 42-K/PMT.II/AD/XII/2023, and regulations on the position of notary and PPAT. Secondary legal materials include books, journal articles, and expert opinions, while tertiary legal materials include dictionaries and legal indexes. Legal materials were collected through document studies, then inventoried, classified, and systematized. The analysis was carried out prescriptively with grammatical, systematic, and teleological interpretations.

3. Results and Discussion

3.1. Criminal Liability of Notaries in the Criminal Act of Corruption of the Army's Mandatory Housing Savings Fund based on Decision Number 42-K/PMT.II/AD/XII/2023

Criminal acts of corruption can generally be classified into seven types, namely those that harm state finances (enriching oneself or abusing authority to the detriment of state finances), bribery,⁶(3) gratification, embezzlement in office, extortion, fraudulent acts, and (7) conflicts of interest.⁷Based on this classification, the case in Decision Number 42-K/PMT.II/AD/XII/2023 falls into the category of acts that harm state finances through abuse of authority in the management of the Army Housing Compulsory Savings Fund (TWP AD).

Decision Number 42-K/PMT.II/AD/XII/2023 is a criminal case with a connection examination procedure, namely a special mechanism used when a crime is committed jointly by subjects from the military and civilian environments in a single series of acts.⁸This case began in the period of June 2019 to January 2020, when the Defendant, who works as a notary, collaborated with Brigadier General TNI (Ret.) Yus Adi Kamrullah (YAK) as the Finance Director of BP TWP AD and Agustinus Soegih as the President Director of PT Indah Berkah Utama. The collaboration was related to the management of the Army Compulsory Housing Savings (TWP AD) fund, which is essentially the funds belonging to TNI AD soldiers and civil servants deducted from their monthly salaries. These funds are

⁶ M Teguh Heriyanto, "Aspects of Corruption in Illegal Logging Permits," *Journal Inicio Legis* 2, no. 1 (2021): 13.

⁷ Satria Unggul Wicaksana Prakasa, "Reconceptualizing Corruption as an International Crime: A Review of International Law," *Lampung Journal of International Law (LaJIL)* 6, no. 2 (2024): 58, <https://doi.org/10.25041/lajil.v6i2.3363>.

⁸ Marisa Oktora, Rina Antasari, and Muhamad Sadi Is, "The Principle of Justice in the Authority of General Courts and Military Courts in Connection Cases in the Indonesian Constitutional System," *Lex Stricta: Journal of Legal Studies* 3, no. 2 (2024): 83, <https://ojs.stihpada.ac.id/index.php/lexstricta>.

legally classified as state finances and their management must comply with the principles of prudence, transparency, and must obtain approval from the Army Chief of Staff (Kasad).⁹

The criminal liability of notaries involved in the corruption case is analyzed using Hans Kelsen's theory of criminal liability, which positions responsibility as a normative consequence of violations of legal norms within a positive legal system. In this theory, Kelsen divides liability into several forms: individual liability, collective liability, fault-based liability (*culpa*), and strict liability.¹⁰ The principle that correlates with criminal responsibility is the basic principle of criminal law, namely "cannot be punished if there is no fault (*geen straf zondershould: Actus non factim reum nisi mens sis rea*).

One of the conditions for criminal responsibility is:¹¹ Intention (*dolus*). Intention is a form of wrongdoing committed with the will and awareness to commit an act prohibited by law. In criminal law doctrine, intention is understood through two theories, namely the will theory (*wilstheorie*) which emphasizes the will to realize the elements of a crime, and the knowledge theory (*voorstellingstheorie*) which emphasizes the perpetrator's awareness or knowledge of the consequences that will arise from his actions. In general, intention is divided into three forms, namely intention as intent (*opzet als oogmerk*), intention with awareness of certainty (*opzet met bewustheid van zekerheid*), and intention with awareness of possibility (*opzet met waarschijnlijkheidsbewustzijn*).

From the perspective of criminal responsibility theory, the case involving Notary H. Tafieldi Nevawan can be classified as a form of individual responsibility. This is because the legal sanctions imposed, whether in the form of imprisonment, fines, or additional penalties in the form of compensation, are directly imposed on a specific legal subject as an individual. Although the crimes committed were declared "jointly and continuously," the court decision still places personal responsibility on the defendant who has been proven to have violated legal norms within the positive legal system.

The criminal liability of a Notary in Decision Number 42-K/PMT.II/AD/XII/2023 is based on the principle of personal criminal responsibility, namely responsibility imposed on the perpetrator based on the actual fault and role he/she played in the crime. The Panel of Judges did not impose a sentence solely because of the Defendant's status as a Notary, but because it was legally and convincingly proven that the Defendant, together (*medeplegen*) with other perpetrators, played a role in the misuse of BP TWP AD funds.

⁹Decision Number 42-K/PMT.II/AD/XII/2023

¹⁰ Hans Kelsen, *Pure Legal Theory*, Translated by Raisul Mutaqien, Nuansa and Nusamedia, (Bandung: Nusamedia, 2006), 140.

¹¹ Aryo Fadlian, "Criminal Responsibility in a Theoretical Framework," *Positum Law Journal* 5, no. 2 (2020): 15, <https://doi.org/10.35706/positum.v5i2.5556>.

Based on the judge's consideration, the element of error in the form of intent (*dolus*) is fulfilled because the Defendant knew the origin of the funds used, was actively involved in land acquisition, received the flow of funds from criminal acts, and used some of these funds for interests that were not in accordance with the objectives of managing the TWP AD Fund. Thus, the error that is accounted for is an individual error that arises from the will and knowledge of unlawful acts. In line with this, the Notary who is proven to have committed the crime of corruption together and continuously and violated the provisions of Article 2 Paragraph (1) in conjunction with Article 18 of the Corruption Law in conjunction with Article 55 Paragraph (1) ke-1 in conjunction with Article 64 Paragraph (1) of the Criminal Code, ultimately bears responsibility which is realized in the form of criminal sanctions of imprisonment, fines and payment of compensation.

First, accountability through the main penalty in the form of imprisonment.

The principal penalty of 7 (seven) years' imprisonment is the primary form of criminal responsibility imposed on a notary for his or her involvement in a criminal act of corruption as a consequence of violating legal norms that protect state finances. The reduction in the temporary detention period from the imposed penalty reflects the application of the principles of legality and legal certainty. This sanction also confirms that the position of notary does not eliminate or reduce criminal responsibility, so that a notary who is proven to have participated in, assisted, or abused his or her authority in making a deed related to a criminal act of corruption remains individually responsible like other legal subjects.

Second, Criminal Liability for Fines.

A criminal fine of IDR 300,000,000.00 with a subsidiary imprisonment of 6 (six) months is a form of criminal responsibility which confirms that perpetrators of criminal acts of corruption are not only subject to restrictions freedom, but also the financial burden resulting from the violation of the law. For notaries, this sanction demonstrates that abuse of authority or involvement in corruption results in personal liability with both criminal and economic dimensions, while the subsidiary imprisonment provision emphasizes the coercive nature of the obligation to pay a fine if it is not met.

Third, Additional Criminal Liability (Compensation).

The additional penalty of paying compensation of Rp1,643,457,500.00 is a form of criminal liability that focuses on recovering state financial losses in addition to punishing the perpetrator. This obligation is accompanied by a mechanism for confiscation and auctioning of assets, or restitution. With Imprisonment if not complied with, thus emphasizing the coercive nature of the restitution of state losses. For notaries, this sanction demonstrates that involvement in corruption

not only gives rise to personal criminal liability but also the obligation to compensate the state for the abuse of authority, thus encompassing both repressive and restorative aspects.

3.2. Legal Implications of the Deeds Issued by Notaries Involved in the Army Housing Compulsory Savings Corruption Case

An authentic deed is a letter or deed that was intentionally and officially created from the beginning for proof. "Intentionally" means that from the beginning, the purpose of the letter or deed was to provide proof in the event of a dispute.¹²In the TWP AD case, the notary issued various deeds, including (1) Deed of Acknowledgement of Debt and Guarantee as the basis for recognizing the advance funds; (2) Deed of Power of Attorney to Sell Number 272 as collateral for debt implementation; (3) Letter of Release of Land Rights (SPHT) related to the investment object; (4) Deed of Release of Rights as the basis for the transfer of land rights; (5) Deed of Sale and Purchase (AJB) for the land acquisition process; and (6) Deed of Amendment to the Articles of Association and Bylaws (AD/ART) of PT Indah Berkah Utama (PT IBU) in the implementation of the investment. However, because these deeds were issued in a series of transactions which were later proven to be related to criminal acts of corruption, their existence not only has an evidentiary function, but also becomes an object of analysis regarding the legal status, evidentiary strength, and its legal implications for the parties and for the deeds themselves.

Legal Status and Validity of Deeds from Notaries Involved in Corruption Cases.

The involvement of a Notary in a criminal act of corruption does not immediately change the legal status or invalidate all deeds he has made. Criminalization of a Notary is a form of personal criminal liability, while the legal status of a deed must be assessed separately based on the fulfillment of the formal and material requirements for its formation. Thus, the legal consequences of a deed are not determined solely by the Notary's criminal status, but depend on the presence or absence of formal defects in the creation of the deed, defects in the cause or object of the legal act stated in the deed, the relationship of the deed to a proven criminal act, and the existence of a competent court decision regarding the deed.

The validity of a notarial deed is essentially determined by the fulfillment of formal and material requirements as stipulated in statutory provisions. Formal requirements include the authority of the official making the deed, the form of the deed, the place of preparation, and the procedures for reading and signing the deed. Material requirements relate to the fulfillment of the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely the

¹² Kholidah et al., *Notaries and PPAT in Indonesia: Application of Theory and Practice in Making Deeds* (Yogyakarta: Semesta Aksara, 2023), 28.

existence of an agreement between the parties, capacity to act, a specific object, and a lawful cause. If these requirements are met, the deed remains an authentic deed with perfect evidentiary force.

The criminal prosecution of a Notary who also serves as a Land Deed Official (PPAT) for his involvement in a criminal act of corruption does not automatically result in all deeds he has made being invalid, void, or losing their evidentiary force. In principle, deeds remain considered valid and binding based on the principle of *presumptio iustae causa*, namely that every deed is considered true and valid until there is a court decision stating otherwise. Therefore, a criminal decision imposing sanctions on a Notary only proves the existence of criminal responsibility against the perpetrator, but does not automatically determine the validity status of all deeds he has ever made. Thus, the validity of a deed is not determined by the notary's criminal conviction alone, but by the legal conditions of the deed and the decision of the competent court.

Legal Consequences of Deeds Issued by Notaries Who Also Serve as PPAT in Corruption Crimes.

The legal consequences of deeds made by a Notary involved in a criminal act of corruption must be assessed carefully and cannot be applied generally to all deeds he has ever made. Criminalization of a Notary is a form of personal criminal liability and does not automatically result in all deeds becoming invalid, losing their legal force, or losing their authentic nature. Determining the legal consequences of a deed depends on the relationship between the criminal act and the process of forming the deed, the substance of the legal act contained therein, and whether or not the formal and material requirements as stipulated in the laws and regulations are met.¹³

From the perspective of civil law and notarial law, material falsity or untruth contained in the contents of a deed does not always eliminate the authentic form of the deed. Material falsity is basically related to the truth of the substance or content of the deed so that it affects the material evidential force or can be the basis for cancellation if decided by the competent court. Conversely, the degradation of a deed from an authentic deed to a private deed can only occur if the formal requirements for the formation of the deed required by law are not met, such as violations of the authority of officials, procedures for making, reading, signing, or other formal requirements. Therefore, the legal consequences for the deed must be distinguished based on the type of legal defect that occurs, namely a deed that still has binding legal force, a deed that can be canceled (*vernietigbaar*), a deed that is null and void (*nietig van rechtswege*), and a deed that loses its authentic nature due to violations of the

¹³ Habib Adjie, Indonesian Notary Law (Thematic Interpretation of the Notary Law) (Bandung: Refika Aditama, 2015), 52.

formal requirements stipulated by statutory regulations.

First, a deed remains legally binding as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, the provisions for authentic deeds in Article 1868 of the Civil Code, and the Notary Law. A notary's involvement in a criminal act of corruption does not automatically eliminate the binding force of all deeds he or she has made, because criminal liability is personal and separate from the validity of the deed. Therefore, an assessment of the binding force of a deed must be carried out casuistically by examining whether or not there is a causal relationship between the criminal act and the making of the deed, as well as the existence of formal or material defects. This approach ensures legal certainty while protecting the rights of parties in good faith who obtain rights based on the deed.

Second, a revocable deed (*vernietigbaar*) is a deed that contains defects in the subjective conditions of the agreement, namely the failure to fulfill the elements of free agreement or the capacity of the parties as stipulated in Article 1320 and Article 1321 of the Civil Code. The deed remains valid and has legal consequences from the time it is made until a court decision declares its cancellation, so that cancellation does not occur automatically, but must be requested by the injured party. In the context of criminal acts of corruption, a deed can be qualified as revocable if the consent of one of the parties is obtained through fraud, concealment of material facts, or abuse of circumstances facilitated by a notary. Thus, the basis for cancellation lies in the existence of a defect in will that results in the subjective conditions of the agreement not being fulfilled, not merely because the notary has been convicted.

Third, a deed void by law (*nietig van rechtswege*) is a deed that has no legal force from the start because it does not fulfill the objective requirements of an agreement, especially regarding certain objects and lawful causes as regulated in Article 1320, Article 1335, and Article 1337 of the Civil Code. Deeds made based on false, prohibited, or contrary reasons to law, public order, or morality are deemed to have never given rise to legal consequences (*ex tunc*), so they cannot be the basis for the birth of rights and obligations of the parties. In contrast to deeds that can be revoked, void by law occurs due to fundamental legal defects, so that all legal consequences originating from the deed are deemed to have never existed from the start.

Fourth, a deed loses its authentic nature if it does not fulfill the formal requirements as regulated in UUJN and Article 1868 of the Civil Code, so that its evidentiary power can be degraded to a private deed.¹⁴ Conversely, a notary's involvement in a criminal act of corruption or material fraud does not necessarily

¹⁴ Sudikno Mertokusumo, Indonesian Civil Procedure Law (Yogyakarta: Cahaya Atma Pustaka, 2013), 164.

diminish the authenticity of the deed, as it concerns the substance, not the form. Therefore, degradation of authenticity occurs only due to a violation of formal requirements, while the validity of the deed's contents is determined by evidence and a court decision.

Based on the above description, it can be concluded that the legal consequences of deeds made by notaries involved in criminal acts of corruption cannot be applied uniformly, but must be determined based on the level of connection between the criminal act and the process and substance of making the deed. A deed remains legally binding if it meets the formal and material requirements and is not related to the criminal act. If there is a defect in the will, the deed can be canceled; if the cause or object of the agreement is contrary to law, the deed can be null and void; while the loss of authenticity can only occur if the formal requirements for the formation of the deed as stipulated in the laws and regulations are not met. Therefore, criminalizing a Notary does not automatically eliminate the authenticity or validity of every deed he makes, but the legal consequences must be determined based on the type of legal defect proven and the decision of the competent court.

Implications for the Legal Relationship of the Parties in a Deed Made by a Notary Who Also Serves as a PPAT

The involvement of a notary in a criminal act of corruption not only has implications for the status and validity of the deed he or she drafted, but also affects the legal relationship of the parties bound by the deed. The legal relationship that originally arose from an authentic deed essentially creates rights and obligations that bind the parties, and can even have legal consequences for third parties. However, when the deed is related to a criminal act of corruption, questions arise regarding whether the established legal relationship can still be maintained, what the status of the parties acting in good faith is, and to what extent the rights and obligations arising from the deed still receive legal protection.

First, the status of the parties acting in good faith. The involvement of a notary in a criminal act of corruption does not automatically eliminate the legal status of the parties acting in good faith. As long as the parties did not know about or participate in the crime and acted based on the belief in the validity of the authentic deed, their rights still receive legal protection. However, if it is proven that they knew about, approved of, or benefited from the crime, their status as parties acting in good faith is lost, and their legal relationship is no longer protected. Therefore, determining the legal status of the parties depends on proving their level of knowledge, involvement, and good faith in the formation of the deed.

Second, the validity of the rights and obligations arising from the deed. Rights

and obligations arising from a notarial deed remain valid as long as the deed still has binding legal force and meets the requirements for a valid agreement, because the legal relationship stems from the agreement of the parties, not from the notary's personality. However, if the deed is proven to be legally flawed or to be part of a criminal act of corruption, the rights and obligations arising from it can be changed or revoked by a court decision. Thus, the validity of rights and obligations is determined by the validity of the substance of the legal relationship and the legal status of the deed in question.

Third, legal certainty regarding the implementation of the deed's contents. Legal certainty is one of the objectives of law (*Rechtssicherheit*), as expressed by Gustav Radbruch. This legal certainty reflects the fact that applicable law must be implemented consistently and cannot be influenced by subjective factors. This demonstrates that certainty and justice are not only moral demands but also factually reflect the law itself.¹⁵ Legal certainty regarding the implementation of the contents of a deed is achieved when an authentic deed is made in accordance with statutory provisions, so that the rights and obligations of the parties can be implemented and obtain perfect evidentiary force. As long as the deed remains valid and binding, criminal prosecution of a notary does not affect the implementation of the contents of the deed. However, if the court declares the deed to be legally flawed or to be part of a criminal act of corruption, then the implementation of the contents of the deed must comply with that decision. Thus, legal certainty regarding the implementation of the contents of the deed depends on the validity of the deed and the judicial assessment carried out by the court.

Fourth, Legal Protection for Third Parties. Third parties who acquire rights based on a notarial deed are entitled to legal protection as long as they act in good faith and are unaware of any legal flaws or criminal acts underlying the deed's creation. This protection is essential to maintaining legal certainty, the stability of legal traffic, and public trust in authentic deeds. However, this protection does not apply if the third party is proven to have knowledge of or participated in the criminal act related to the deed. Therefore, the court must carefully assess the existence or absence of good faith in each case in order to balance legal protection with law enforcement.

Based on the above description, in Decision Number 42-K/PMT.II/AD/XII/2023 there is no ruling that expressly orders the cancellation, invalidation, or removal of the legal force of deeds made by a Notary who also serves as a Land Deed Official (PPAT). The decision essentially only imposes criminal liability on the perpetrator for proven corruption. Therefore, normatively, the legal relationship arising from the deed remains valid and binding as long as the deed meets the formal and material requirements, is not subject to cancellation by the

¹⁵ Cst Kansil, Dictionary of Legal Terms (Jakarta: Jala Permata Aksara, 2009), 385.

competent court, and the interested parties are not proven to be involved in the crime. Conversely, if at a later date, through a legally binding court decision, it is proven that a deed is directly related to a crime or contains legal defects that affect its validity, then the legal consequences for the rights, obligations, and legal relationships of the parties are determined based on the decision.

In line with this, Gustav Radbruch, in his theory, asserts that legal certainty must not override justice. According to Radbruch,¹⁶ If a positive law clearly contradicts the values of justice, then the legitimacy of its application can be questioned. Legal certainty is essentially a guarantee for every member of society that the state will treat everyone according to applicable legal provisions and not based on arbitrary actions.¹⁷ In addition to providing certainty regarding the protection of rights, legal certainty also requires clarity regarding the content of the norms that form the basis for the application of the law.

3.3. Structure and Format of the Deed of Sale and Purchase (AJB) in PPAT/Land Practices to be Valid, Legally Binding and Minimize the Risk of Legal Violations.

Minimizing the risk of legal violations in Land Deed Official (PPAT) practices is an important preventive measure to ensure legal certainty, legal protection, and orderly land administration. Considering that the AJB is an authentic deed that serves as the basis for registering the transfer of land rights, each stage of its creation must be carried out in accordance with statutory provisions and the principle of prudence. Therefore, preventive efforts are not only carried out during the creation of the deed, but also from determining official capacity, examining documents and the legality of the parties, verifying the transaction object, to implementing the principle of knowing the service user. Some of these efforts are outlined below:

A notary who also holds the position of PPAT is obliged to separate the capacities of the two positions and follow the form and procedures of the PPAT deed.

Notaries and Land Deed Officials (PPAT) are two public positions that have different legal bases, scopes of authority, and responsibilities, even though they can be held by the same person. The authority of a Notary is derived from the UUJN, while the authority of a PPAT is regulated in Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Officials as amended by Government Regulation Number 24 of 2016. This difference has the consequence that every legal action must be carried out in

¹⁶ Tristam Pascal Moeliono and Tanius Sebastian, "Reductionist and Utilitarian Tendencies in Indonesian Legal Science: Rereading Gustav Radbruch's Philosophy of Law," 5th Conference, Solo, 17-18 November 2019 1, no. 1 (2019): 17, https://repository.unpar.ac.id/bitstream/handle/123456789/3174/maklhsc250_Tristam_Moeliono_Reductionist_and_Utilitarianist_Tendencies-p.pdf?sequence=1&isAllowed=y.

¹⁷ Sulaiman, Abdullah. Introduction to Legal Science (Jakarta: UIN Jakarta and YPPSDM, 2021), 43.

accordance with the capacity of the position being carried out. Therefore, when making a Deed of Sale and Purchase (AJB) or other land deeds, an official who also serves as a Notary and a PPAT is obliged to act as a PPAT using the forms, procedures, and procedures specified in the laws and regulations in the land sector, not based on the authority as a Notary.

The separation of official capacities is an implementation of the principles of legality, legal certainty, and professionalism in the administration of public office. Mixing the powers of a Notary and a Land Deed Official (PPAT) has the potential to create procedural inconsistencies, affect the formal validity of deeds, and open up opportunities for abuse of authority that could lead to administrative, civil, and criminal liability. In the context of Decision Number 42-K/PMT.II/AD/XII/2023, the separation of official capacities is crucial to emphasize that a Notary's criminal liability does not automatically invalidate all PPAT deeds they have ever drawn up. The validity of a deed must still be assessed based on the fulfillment of the formal and material requirements for its creation and its connection to a criminal offense proven in court.

Application of the Principle of Prudence in Making PPAT Deeds.

The prudential principle is one of the fundamental principles that must be applied by Land Deed Officials (PPAT) in every deed-making process. The application of this principle aims to ensure that all legal acts outlined in the deed comply with statutory provisions, are supported by valid data and documents, and are free from elements of abuse of authority or unlawful acts. In the context of preventing criminal acts, the prudential principle not only functions to protect the interests of the parties, but also serves as a preventive instrument for Land Deed Officials (PPAT) to prevent them from being involved in criminal acts, including corruption, money laundering, and document falsification. Therefore, efforts to apply the prudential principle in the preparation of Land Deed Officials (PPAT) include:

First, verify the identity and authority of the parties. This is the initial step in determining the validity of a legal act. The Land Deed Official (PPAT) is required to ensure that each party appearing before him has the correct identity, is legally competent, and has the authority to perform legal acts on the transferred object. If the parties are acting under a power of attorney or representing a legal entity, the PPAT must also verify the validity of the power of attorney and the documents that form the basis of that authority. This verification is crucial to prevent identity fraud, abuse of authority, and legal acts by unauthorized parties, thereby ensuring legal certainty regarding the deed.

Second, verify the certificate and legal status of the land object. In addition to examining the parties, the Land Deed Official (PPAT) is also obliged to verify the certificate and legal status of the land object that is the object of the transaction.

This inspection includes the authenticity of the certificate, the conformity of physical and legal data, the status of land rights, and ensuring that the land is not in a state of dispute, seizure, blockage, or encumbered with a mortgage that could hinder the transfer process. Verification is carried out to ensure that the transaction object meets the requirements for transfer and to avoid future disputes. Thus, the issued deed not only meets formal requirements but also provides legal certainty regarding the object of the agreement.

Third, reviewing administrative and tax requirements. This effort is an integral part of implementing the principle of prudence in the preparation of a Deed of Sale and Purchase. The Land Deed Official (PPAT) is required to ensure that all administrative requirements have been met, including payment of Land and Building Acquisition Tax (BPHTB), Income Tax (PPh), consent from the husband or wife if required, consent from the heirs if the object is inherited, and consent from the legal entity if one of the parties is a legal entity. Completeness of these requirements not only ensures orderly land administration but also minimizes the risk of disputes, deed cancellation, and liability for the PPAT due to negligence in carrying out his/her official duties.

Implementation of the Know Your Customer Principle.

Implementing the Know Your Customer (KYC) principle is part of the PPAT's obligation to prevent the misuse of notary and land services for criminal purposes, particularly money laundering and corruption. This obligation aligns with statutory provisions. Efforts to implement the Know Your Customer (KYC) principle can be carried out in the following ways:

First, identify the beneficial owner and the source of funds. This effort is a crucial part of implementing the principle of recognizing the service user. The Land Deed Official (PPAT) must not only know the formal identity of the parties present but also ensure the actual beneficiary of the transaction and trace the origin of the funds used. This inspection aims to prevent the use of the identity of another party (nominee), the concealment of the true beneficial owner, or the use of land transactions as a means of money laundering or disguising the proceeds of corruption. If any indicators of an irregular transaction are found, such as an unexplained source of funds, a transaction value disproportionate to the service user's profile, or a transaction structure designed to disguise the beneficial owner, the PPAT must exercise increased caution before proceeding with the deed.

Second, documenting and rejecting risky transactions. The entire process of examining the identities of the parties, documents, transaction objects, beneficial owners, and sources of funds must be fully documented as part of the PPAT's official administration. This documentation serves as evidence that the PPAT has carried out its professional obligations in accordance with the principle

of prudence and statutory regulations. If the examination results indicate that the transaction is unlawful, uses invalid documents, contains elements of disguised proceeds of crime, or the parties fail to meet the specified requirements, the PPAT is obliged to reject the deed. This rejection, based on legal grounds and supported by adequate documentation, provides legal protection for the PPAT and reflects professional, independent, and integrity-based performance of the position.

4. Conclusion

Based on the research results, it can be concluded that the criminal liability of notaries in Decision Number 42-K/PMT.II/AD/XII/2023 is based on the principle of individual responsibility with proof of intent and active role in the crime of corruption, so that they are sentenced to imprisonment, fines, and compensation. This punishment does not immediately eliminate the validity of all deeds made, because the validity of the deed is still determined by the fulfillment of legal requirements and its relationship to the crime. The Sale and Purchase Deed (AJB) as a PPAT deed must be prepared in accordance with the provisions of laws and regulations, with the application of identity verification, object legality checks, and the principle of prudence to minimize the risk of misuse and provide legal protection to parties with good intentions. This research suggests that the Notary Supervisory Board and the PPAT Advisory Board should improve the effectiveness of their supervision through periodic compliance audits and risk-based preventive supervision of deeds and supporting documents, particularly in large-value transactions or those involving legal entities. Furthermore, notaries and PPATs need to apply the principle of prudence in every Deed of Sale and Purchase (AJB) through thorough verification of the identities of the parties, the authenticity of the certificate, land status, tax documents, and ensuring that the transaction is conducted legally and is not used to facilitate criminal acts.

5. References

Journals:

- Amilia, Ni Komang Sri Intan, and I Gede Yusa. "Akibat Hukum Pelanggaran Kewajiban Notaris Terhadap Ketentuan Pasal 3 Angka 15 Kode Etik Notaris." *Acta Comitas: Jurnal Hukum Kenotariatan* 06, no. 03 (2021): 510–520.
- Ariyanto, Teguh, and Sudarto. "Pertanggungjawaban Pidana Notaris Dalam Tindak Pidana Membantu Menyuruh Menempatkan Keterangan Palsu Kedalam Akta Autentik." *Iblam Law Review* 4, no. 3 (2024): 153–157.
- Fadlian, Aryo. "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis." *Jurnal Hukum Positum* 5, no. 2 (2020): 10–19. <https://doi.org/10.35706/positum.v5i2.5556>.
- Heriyanto, M Teguh. "Aspek Tindak Pidana Korupsi Pada Perizinan Pembalakan

- Liar." *Journal Inicio Legis* 2, no. 1 (2021): 1–20.
- Moeliono, Tristam Pascal, and Tanius Sebastian. "Tendensi Reduksionis Dan Utilitarianis Dalam Ilmu Hukum Indonesia: Membaca Ulang Filsafat Hukum Gustav Radbruch." *Konferensi Ke 5, Solo, 17-18 November 2019* 1, no. 1 (2019): 1–32.
- Oetomo, Ivana Budiani, and Pieter E Latumeten. "Notaris Sebagai Subjek Hukum Pidana Dalam Sistem Peradilan Indonesia." *Jurnal Ilmiah Galuh Justisi* 12, no. September (2024): 209–220.
- Oktora, Marisa, Rina Antasari, and Muhamad Sadi Is. "Asas Keadilan Dalam Kewenangan Peradilan Umum Dan Peradilan Militer Dalam Perkara Koneksitas Dalam Sistem Ketatanegaraan Indonesia." *Lex Stricta: Jurnal Ilmu Hukum* 3, no. 2 (2024): 81–92. <https://ojs.stihpada.ac.id/index.php/lexstricta>.
- Prakasa, Satria Unggul Wicaksana. "Reconceptualizing Corruption as an International Crime : A Review of International Law." *Lampung Journal of International Law (LaJIL)* 6, no. 2 (2024): 55–68. <https://doi.org/10.25041/lajil.v6i2.3363>.
- Yuliska, Nanda, and Rasji. "Implementasi Notaris Yang Dijatuhkan Sanksi Sebagai Pelaku Tindak Pidana." *Unes Law Review* 6, no. 2 (2023): 5589–95.
- Yustica, Anugrah, Ngadino, and Novira Maharani Sukma. "Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum." *Notarius* 13, no. 1 (2020): 60–71. <https://doi.org/10.61722/jinu.v1i4.1571>.

Books:

- Adjie, Habib. (2015). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap Undang-Undang Jabatan Notaris)*. Bandung: Refika Aditama.
- Kansil, Cst. (2009). *Kamus Istilah Hukum*. Jakarta: Jala Permata Aksara.
- Kelsen, Hans. (2006). *Teori Hukum Murni, Terjemahan Raisul Mutaqien, Nuansa Dan Nusamedia*,. Bandung: Nusamedia.
- Kholidah, Putra Halomoan Hasibuan, Muhammad Reza Alamsyah, Ade Fitri Ramadani, and Amil Keramat. (2023). *Notaris Dan PPAT Di Indonesia Aplikasi Teori Dan Praktik Dalam Pembuatan Akta*. Yogyakarta: Semesta Aksara.
- Mertokusumo, Sudikno. (2013). *Hukum Acara Perdata Indonesia*. Yogyakarta: Cahaya Atma Pustaka.
- Sulaiman, Abdullah. (2021). *Pengantar Ilmu Hukum*. Jakarta: UIN Jakarta Bersama YPPSDM.