

## Legal Review of Notary's Responsibility for the Criminal Act of Forgery of Authentic Deeds

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**Abstract.** *To examine and discuss in order to analyze and be able to understand the Notary's Responsibility for the Criminal Act of Forgery of Authentic Deeds (/PPAT for Authentic Deeds, in this case the responsibility of a Notary/PPAT if the deed is cancelled due to his/her negligence is to pay compensation to the parties, both real (material) and unreal (immaterial) compensation and because it is intentional. This legal research aims to determine the responsibility of a notary for the criminal act of forgery of an Authentic Deed, the main case of which is that the Notary/PPAT has committed a deviation from Article 263 paragraph 1 and Article 264 paragraph 1 of the Criminal Code (hereinafter referred to as the Criminal Code) with the accusation of making fake letters/documents or making minutes of a deed by forging the signatures of the parties. This research is a normative legal research with the approach of applicable Legislation (statute approach) and case approach (case approach). The legal materials used in this legal research are secondary legal materials with the data collection technique used is literature study. The results of this study indicate that the creation of an Authentic Deed with the accusation of making fake letters/documents or making minutes of the deed by falsifying the signature of the person appearing, as regulated in Article 16 paragraph (1) letter m of Law No. 2/2014 will result in the Deed being degraded in its evidentiary power to become a Deed underhand.*

**Keywords:** *Accountability; Authentic; Criminal; Notary.*

### 1. Introduction

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.<sup>1</sup> Therefore, in order to create public order in society, a Notary as a person who is authorized to make authentic deeds as stipulated by law regarding the form of authentic deeds

<sup>1</sup>Article 1 Number 1 Law no. 2 of 2014 concerning the Position of Notary

and understands the legal requirements in an agreement, then if these requirements are still violated, it is the responsibility of the notary as a person who knows about the law and plays a role in providing legal advice to clients as a preventive measure, so that there is no legal chaos and the notary is free from legal problems.

Based on the explanation above, it can be said that a Notary is a public official who is authorized to make authentic deeds, as long as the making of the authentic deed is not specifically for other public officials. Article 1 number 1 and Article 15 paragraph 1 of the UUJN emphasize that a notary is authorized to make authentic deeds.

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as long as the making of the deeds is not also assigned or excluded to other officials stipulated in the law. The exception to this authority is in the making of deeds by the Land Deed Making Officer (hereinafter referred to as PPAT) which is the authority of the PPAT, meaning that there are deeds stipulated in the law that may only be made by PPAT. The making of authentic deeds is required by statutory regulations in order to create certainty, order and legal protection.

A notarial deed was born because of the direct involvement of the party facing the notary, the parties who are the main actors in making a deed so that an authentic deed is created. A notarial deed is an authentic deed made by or before a notary according to the form and procedures stipulated in the law. A deed made by a notary authentically conveys all actions, agreements and stipulations witnessed by the presenters and witnesses. An authentic deed contains an agreement between the parties who appear before the notary.

Notarial Deed/PPAT is one of the data sources for data maintenance. Therefore, it must be made in such a way that it can be used as a strong basis for registration of the transfer and encumbrance of the relevant rights. The deed made by the Notary/PPAT must not be made carelessly, both regarding the form, content, and method of making the Notarial Deed/PPAT. The Notarial Deed/PPAT is an agreement between the parties that binds those who make it, so the requirements for the validity of an agreement must be met in accordance with Article 1320 of the Civil Code which regulates the requirements for the validity of an agreement. Among others, subjective requirements are requirements related to the subject who enters into an agreement consisting of the existence of an agreement and being able to act to carry out a legal act, and other requirements are objective requirements, namely requirements related to the agreement itself or related to the object that is used as a legal act by the parties consisting of the existence of a certain thing and a reason that is not prohibited.

Notary/PPAT as one of the public officials who has an important role in ensuring legal certainty, order and legal protection through authentic deeds made by and

before him, then authentic deeds are strong evidence and if there is a dispute in Court unless it can be proven untrue, so that the Notary/PPAT deed provides perfect proof as stated in Article 1870 of the Civil Code to the parties who made it. If there is a dispute over the deed, the deed can be canceled or null and void by law.

Negligence in carrying out the position does not rule out the possibility of a legal problem in both the criminal and civil realms in the process of making an authentic deed by a Notary who does not uphold the principle of caution, one way or another due to unprofessional behavior or an indication of the Notary's bias towards one party. This Notary's carelessness can have legal consequences for the validity of the deed he made and can be a loophole for parties who want to take advantage of the situation to take advantage and drag

The notary as a co-defendant in the litigation process can even request compensation, costs and interest from the notary for losses suffered by the parties due to the notary's negligence in making the deed in question.

An authentic deed essentially contains formal truth in accordance with what the parties have informed the Notary. However, the Notary has an obligation to ensure that what is contained in the Notarial Deed has been truly understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed are clear, and providing access to information regarding related laws and regulations for the parties signing the deed. Thus, the parties can freely determine whether or not to agree to the contents of the Notarial Deed that they will sign. The signature on an authentic deed functions as a sign of agreement to the obligations attached to the deed.<sup>2</sup>

Thus, a notary is a noble profession (*nobile officium*). It is called *nobile officium* because the notary profession is very closely related to humanity. A deed made by a notary can be the legal basis for a person's property status, rights and obligations. Mistakes in a notarial deed can result in the revocation of a person's rights or the burdening of a person with an obligation. In carrying out their duties and positions, notaries must always be guided by laws and regulations, codes of ethics, and morals because if a violation is committed by the notary, it will be very detrimental to the parties. If the deed he made contains legal defects due to the notary's mistake, either negligence or the notary's own intention, then the notary must be held accountable morally and legally. The involvement of a notary in a criminal case is caused by the notary's negligence which is usually exploited by the parties by falsifying material evidence, such as identity. It is undeniable that there are also notaries who are involved in criminal acts in a deed, such as the crime of falsifying the deed he made. Forgery of authentic deeds is a crime that deserves to be dealt

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<sup>2</sup>[Www.Fairuzelsaid.Wordpress.Com/Cyber-Law-Tanda-Tangan-Digital/](https://www.fairuzelsaid.wordpress.com/cyber-law-tanda-tangan-digital/) Accessed on Thursday 20 February 2020

with considering that such deeds are not only related to evidence but also to the trust factor towards the authorized official who is given the authority to make such deeds by law.<sup>3</sup>

In criminal law, regarding the falsification of the contents of authentic deed Number 149, it is regulated in the provisions of Article 264 paragraph (1) of the Criminal Code, which states that: (1) Forgery of documents is subject to a maximum prison sentence of eight years, if committed against authentic documents, debt letters or debt certificates from a country or part thereof or from a public institution, letters of ownership or debt or certificates of ownership or debt from an association, foundation, corporation or airline, talon, proof of dividends or interest from one of the documents described in 2 and 3, or proof issued as a substitute for these documents, letters of credit or trade letters intended for circulation. Based on the background description outlined above,

## **2. Research Methods**

This writing uses normative legal research methods. Normative legal research, namely library legal research or legal research based on data that has been documented in the form of legal materials. This writing uses a type of legal concept analysis approach (analytical & conceptual approach).

## **3. Results and Discussion**

### **3.1. Notary's Responsibility for Forgery of Authentic Deeds**

The authenticity of a Notary/PPAT deed is not only on the paper or its physical form, but the deed in question is truly made before a notary as a Public Official with all his/her authority or in other words the deed made by a notary has an authentic nature, not because the law stipulates so, but because the deed is made by or before a Public Official, as referred to in Article 1868 of the Civil Code. As a Public Official, a notary in exercising his/her authority to make an authentic deed must be Independent. In everyday terms, the term Independent is often equated with independent. In the concept of Management, the application of the term independent means that the institution concerned can managerially stand alone without depending on its superiors, but institutionally remains dependent on (dependent) its superiors. While Independent both managerially and institutionally does not depend on its superiors or other parties. This independence questions the independence of Public Officials from intervention or influence from other parties or being given tasks by other agencies. Therefore, in the concept of Independent, this must be balanced with the concept of Accountability. This accountability questions transparency in accepting criticism

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<sup>3</sup>R. Soesilo, Criminal Code (KUHP) and its Complete Commentaries Article by Article, (Bogor: Politeia, 1985), p. 62.

with external supervision (controlled) and being responsible to external parties for the results of one's work or the implementation of one's job duties.

Notaries are burdened with responsibility for their actions/work in making authentic deeds. The responsibilities of a notary as a public official include the responsibilities of the notary profession itself which are related to deeds, including:

#### 1. Civil Liability of Notaries/PPAT

The notary's civil liability for the deed he made, in this case, is the responsibility for the material truth of the deed, in the construction of an unlawful act. An unlawful act here is in the nature of both active and passive. Active, in the sense of carrying out an act that causes harm to another party. While passive, in the sense of not carrying out an act that is a must, so that the other party suffers a loss. So the elements of an unlawful act here are the existence of an unlawful act, the existence of an error and the existence of a loss incurred. An unlawful act here is interpreted broadly, namely an act that not only violates the law, but also violates propriety, morality or the rights of others and causes loss. An act is categorized as an unlawful act if the act:

- a. Violating the rights of others.
- b. Contrary to the legal obligations of the perpetrator
- c. Contrary to decency.
- d. Contrary to the propriety of paying attention to one's own interests and the property of others in everyday social interactions.

#### 2. Criminal Responsibility of Notaries/PPAT

The criminal liability of a Notary/PPAT for the deeds he/she has made. Criminal in this case is a criminal act committed by a Notary/PPAT in his/her capacity as a public official authorized to make deeds, not in the context of an individual as a citizen in general.

Criminal acts are acts that are prohibited in a legal regulation, where the prohibition is also accompanied by sanctions or threats in the form of certain criminal sanctions for those who violate. Criminal provisions are not regulated in the Notary Law, but in terms of criminal responsibility, a Notary/PPAT who commits a criminal act can be imposed on the Notary/PPAT. In the Notary Law, it only regulates sanctions for violations committed by Notaries/PPATs in the form of deeds made that do not have authentic power or only have evidentiary power as private deeds. Meanwhile, sanctions can be given to the Notary/PPAT in the form of a warning to dishonorable dismissal. Criminal cases related to the formal aspects

of Notarial deeds, investigators, public prosecutors, and judges will include the Notary/PPAT having taken legal action, namely:

- 1) Making fake/falsified letters and using fake/falsified letters (Article 263 paragraph (1), (2) of the Criminal Code);
- 2) Committing forgery (Article 264 of the Criminal Code); Ordering to include false information in an authentic deed (Article 266 of the Criminal Code);
- 3) Doing, ordering to do, those who participate in doing it (Article 55 jo Article 263 paragraph (1) and 92) or 264 or 266 of the Criminal Code);
- 4) Assisting in making fake or falsified letters and using fake or falsified letters (Article 56 paragraph (1) and (2) in conjunction with Article 263 paragraph (1) and (2) or 264 or 266 of the Criminal Code).

If it is related to the aspect of formal criminal acts committed by the Notary/PPAT, in a conscious state a person can also commit acts which are prohibited acts, then there must be an element of error from the perpetrator of the crime, namely intent (*opzet*) and caution (*culpa*).

Intention (*opzet*) is something that occurs in most criminal acts. It is usually taught that there are 3 (three) types of intention, namely:

- a. Intentional intent to achieve something (*opzet als oogmerk*);
- b. Intention that does not contain a goal, but is accompanied by the awareness that a result will definitely occur (*opzet bij zekerheidsbewustzijn*);
- c. Intention but accompanied by awareness there is only a possibility (not certainty) that a result will occur (*opzet bij mogelijkheidsbewustzijn*). In addition, this intention must also concern 3 (three) elements, namely:
  - a. Prohibited acts;
  - b. The consequences are the main reason for the prohibition; ✓ That the act is against the law.

The legal construction used in civil liability for the material truth of the deed made by the Notary is the construction of an unlawful act (Article 1365 of the Civil Code). What is called an unlawful act has both active and passive properties. Active in the sense of carrying out an act that causes harm to another party, thus an unlawful act is an active act. Passive in the sense of not carrying out a certain act or an obligation, then the other party can suffer a loss. The elements of this unlawful act include the existence of an unlawful act, the existence of an error and the existence of a loss incurred. As with the development of contemporary unlawful act

institutions, what is meant by an unlawful act is an unlawful act in the broad sense. In more detail, an unlawful act is if:

- 1) Violating the rights of others;
- 2) Contrary to the legal obligations of the perpetrator;
- 3) Contrary to decency;
- 4) Contrary to the propriety of paying attention to one's own interests and the property of others in everyday social interactions.

### 3. Administrative Responsibilities of Notaries/PPAT

There is a very strong correlation between the Notary Law, the Land Deed Officials' Regulations and their professional code of ethics. The professional code of ethics regulates Notaries/PPATs internally and the Notary Law and Land Deed Officials' Regulations regulate externally. Notaries/PPATs in carrying out their duties must do the following:<sup>4</sup>

- 1) Notaries/PPAT are required to make deeds properly and correctly. This means that the deeds made fulfill the general wishes and requests of the interested parties because of their position;
- 2) Notaries/PPATs are required to produce quality deeds. This means that the deeds made are in accordance with the rules of law and the wishes of the interested parties in the true sense, not made up. Notaries/PPATs must explain to the interested parties the truth of the contents and procedures of the deeds they make. And the deed has a positive impact, so that anyone will acknowledge the deed as having perfect evidentiary power.

Then, the matter that is always questioned is the formal aspect, especially regarding:

- a. Certainty of the day, date, month, year and time of the day;
- b. Whose party is facing;
- c. Facing signature;
- d. The copy of the deed does not match the minutes of the deed;
- e. A copy of the deed exists, without a deed minute being made;

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<sup>4</sup>Abdul Ghofur Anshori, Indonesian Notary Institution, Legal and Ethical Perspectives, UII Press, Yogyakarta, 2009, p.49



The minutes of the deed were not signed in full, but the minutes of the deed were issued. In Article 85 of the Notary Law, it is also regulated regarding sanctions for Notaries who violate the formal aspects, namely:

o Verbal reprimand; o Written warning; o Temporary suspension; o Honorable discharge; o Dishonorable discharge.

Of the several sanctions that will be imposed on the Notary, those included in administrative sanctions are temporary dismissal, honorable dismissal, and dishonorable dismissal.<sup>5</sup>

The explanation of the Notary Law shows that a Notary is only responsible for the formalities of an authentic deed and not for the material of the authentic deed. This requires the Notary to be neutral and impartial and to provide a kind of legal advice for clients who ask for legal guidance from the Notary concerned. In line with this, the Notary can be held responsible for the material truth of a deed if the legal advice he gave later turns out to be wrong. Through the construction of the explanation of the Notary Law, it can be concluded that a Notary can be held responsible for the material truth of a deed he made if it turns out that the Notary did not provide access to a certain law related to with the deed he made so that one of the parties felt deceived by his ignorance.<sup>6</sup>

#### 4. Conclusion

According to civil law, if a Notary is proven to have fulfilled the elements of an unlawful act in Article 1365 of the Civil Code in making a deed and causing harm to one of the parties, then the injured party can file a lawsuit for damages against the Notary/PPAT concerned. According to criminal law, if a Notary is proven to have violated Article 263 paragraph (1), (2) of the Criminal Code, (Article 264 of the Criminal Code), (Article 266 of the Criminal Code); (Article 55 in conjunction with Article 263 paragraph (1) and (92) or 264 and 266 of the Criminal Code; (Article 56 paragraph 1 and 2 in conjunction with Article 263 paragraph (1) and (2) or 264 and 266 of the Criminal Code, then the Notary can be subject to criminal charges with a minimum prison sentence of 6 (six) years, maximum 8 (eight) years. According to administrative law, if in making a Notarial deed the Notary violates the articles in the UUJN, the Regulation of the Land Deed Making Officer and the code of ethics of his profession, then the Notary will be subject to sanctions contained in article 85 of the UUJN, in the form of: Verbal warning; written warning; temporary dismissal; honorable dismissal; dishonorable dismissal.

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<sup>5</sup>Habib Adjie, Civil and Administrative Sanctions Against Notaries as Public Officials, Op.Cit, p.114-116

<sup>6</sup>Ima Erlic Yuana, Notary's Responsibilities After the End of His Term of Office Regarding Deeds *It was created in accordance with Law Number 30 of 2004 concerning the Position of Notary*, Master Notary Office of Diponegoro University Semarang, 2010, Thesis



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