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Forgery of Authentic Deeds by Notaries Reviewed From a Criminal Law Perspective (Case Study of the Decision of the Supreme Court of the Republic of Indonesia Number 303 K–Pid–2004)

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Abstract. *Human free will is often a factor that triggers the emergence of problems in notarial practice, especially related to the forgery of authentic deeds. The inability to fully understand and anticipate the wishes of the parties dealing with the notary, opens up a gap for abuse of office, including forgery of the contents of the deed. This study aims to examine the basics of testing the authenticity of forged notarial deeds and to examine the legal responsibilities that can be imposed on the notary involved. The method used in this research is normative juridical, with an approach to the inventory of positive law, legal principles, legal doctrine, and studies of court decisions, especially the Decision of the Supreme Court of the Republic of Indonesia Number 303 K/Pid/2004. The results of this study indicate that the authenticity of a notarial deed suspected of being forged can be tested through an understanding of the form, nature, and legal function of the authentic deed itself. If forgery is proven, the deed can lose its legal force as an authentic deed and is only considered a deed under hand, and can even be declared null and void or legally invalid. If the notary is proven to be involved, the person concerned can be held accountable civilly, criminally, and subject to ethical and other administrative sanctions in accordance with applicable provisions.*

Keywords: *Authenticity; Forgery; Notary.*

1. Introduction

In a state of law, law is the main pillar in moving the joints of social, national, and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations.

This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

This is done to create, maintain and defend peace in social life in accordance with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to feel safe and free from all forms of crime.

The Republic of Indonesia is a country based on law as stated in the 1945 Constitution, the consequence of the Republic of Indonesia as a country based on law is created by the existence of a judicial institution where this institution is a requirement for a country that calls itself a country based on law or a country based on law. The Attorney General's Office of the Republic of Indonesia is one of the state government institutions that exercises state power in the field of prosecution. The Attorney General's Office of the Republic of Indonesia issued Attorney General's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. According to this regulation, the Public Prosecutor (JPU) has the right to stop the prosecution process against the defendant for certain cases if there is a peace agreement between the victim and the defendant.

With the issuance of the Attorney General's Regulation (Perja) Number 15 of 2020, it is hoped that this will be good news for the public who consider minor criminal cases not worthy of being continued to court. It is said to be unworthy because the court costs incurred are not comparable to the value of the loss from the crime, if there is a desire from the victim to reconcile and if the case is continued, it has the potential to harm public justice. Therefore, the Attorney General's Regulation (Perja) Number 15 of 2020 is expected to be able to overcome the dilemma of over capacity in the courts.

Attorney General's Regulation (Perja) Number 15 of 2020 concerning Restorative Justice has been in effect since it was issued by the Attorney General's Office of the Republic of Indonesia, the purpose of which is as a facilitator in seeking peace. Attorney General's Regulation (Perja) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which has 5 principles, namely justice, public interest, proportionality, criminal as a last resort, and fast, simple, and low cost. As an institution that has the authority to prosecute, the prosecutor's office has no choice not to continue the legal process.

Indonesia adopts an integrated criminal justice system based on the principle of functional differentiation. Every law enforcement officer carries out law enforcement in accordance with the mechanism of the authority process given to each law enforcement officer based on what is regulated in the law. The mechanism of the integrated criminal justice system is intended to prove up to convicting people who commit crimes. In other words, to prove someone

guilty or not, it must go through a process regulated in the procedural law implemented by the state apparatus at every stage.

The criminal justice system in Indonesia consists of four components, namely the Police, the Prosecutor's Office, the Court and the Correctional Institution. These four components are expected to work together and form the functioning of an integrated criminal justice system. The criminal justice process in Indonesia consists of a series of stages starting from investigation, inquiry, arrest and detention by the police, prosecution by the prosecutor's office, examination at trial, to sentencing by the court and correctional institution. These stages are very complex activities. All of them aim to find and bring closer the material truth, namely the most complete truth of a criminal case by establishing the provisions of criminal procedure law honestly and accurately.

A prosecutor is a state apparatus whose duty or authority is to prosecute defendants. The public assumes that their duties are the same as those of a public prosecutor. In fact, both have different duties. The duties and authorities of a prosecutor are regulated in Article 30 of Law of the Republic of Indonesia Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The existence of this Law differentiates the duties and authorities between the Attorney General and the Public Prosecutor.

In the Criminal Procedure Code, it is stated that the public prosecutor has the authority to discontinue the prosecution for legal purposes if the case being tried has expired, the evidence presented is inadequate and the suspect has died. Meanwhile, the public prosecutor does not have the authority to discontinue handling of the case to the trial stage if the formal and material requirements of a case have been met. The consequence is that when the perpetrator and victim agree to make peace at the prosecution stage, the public prosecutor will continue to continue the case until it has permanent legal force (trial process).

The existence of the Attorney General's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which gives the public prosecutor the authority to terminate prosecution based on justice is a breakthrough in resolving criminal acts. Restorative Justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a win-win solution and emphasizing that the victim's losses are replaced and the victim forgives the perpetrator of the crime. To realize this, it is necessary to know how to implement Restorative Justice in Batam City, and whether the implementation of Restorative Justice is still minimal in Batam City.

2. Research methods

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research. What is used in this research consists of approach methods, research specifications, sources and types of data, data collection techniques and data analysis techniques.

3. Results and Discussion

3.1 The Basis for Testing the Authenticity of a Forged Notarial Deed

A notarial deed should be a legal document that has validity and must be considered true. This is because a notary is an official who is authorized to make deeds related to legal actions, agreements, and determinations that are required by law or requested by interested parties. A notarial deed has perfect evidentiary power, so it does not require additional evidence to prove its contents. If there is a party who doubts, denies, or claims that the deed is fake, then the burden of proof lies with the party filing the objection.

Article 1868 of the Civil Code, which states that: "an authentic deed is a deed that is (made) in the form determined by law, made by or before authorized public officials for that purpose, at the place where the deed is made". Furthermore, according to Article 285 Rbg, "an authentic deed is one that is made, in a form in accordance with the law by or before authorized public officials at the place where the deed is made, is complete evidence between the parties and their descendants and those who receive rights regarding what is contained therein and even about a mere statement; this last matter is as long as the statement has a direct relationship with what is the subject of the deed". Based on Article 1868 of the Civil Code and Article 285 Rbg, the elements of an authentic deed can be described, namely:

1) The deed is drawn up in the form determined by law;

2) The deed is made by or before a public official; And

3) The deed is made in the area where the authorized official is domiciled;

Forgery according to the Big Indonesian Dictionary (KBBI), comes from the word fake which means "not genuine, invalid, imitation, fake, while forgery is interpreted as the process, method, act of forging". Fake indicates an item is not original, while forgery is the process of making something fake. So that from the word forgery there is a perpetrator, there is a forged item and there is a purpose of forgery. "Forgery is classified as a crime. The crime of forgery or counterfeiting of an object that looks from the outside as if it is true when in fact it is contrary to the truth" (Chazawi, 2011).

1. BackgroundBack Case

Case study of the Supreme Court Decision of the Republic of Indonesia Number 303 K/Pid/2004. As follows:

a. Decision Number: 303 K/Pid/2004

b. Type of Case: Criminal Act of Forgery of Documents (Article 264 Paragraph 1 of the Criminal Code)

c. Defendant: A Notary

d. Cassation Level: Supreme Court of the Republic of Indonesia

e. Verdict: Rejecting the defendant's appeal and declaring the defendant legally and convincingly guilty of committing the crime of document forgery.

The defendant, a notary, was charged with making an authentic deed whose contents did not correspond to the actual facts. The deed was made without the presence of the parties who should have been present and without their consent, so it contained false information.

2. Judge's Legal Considerations

The Panel of Judges of the Supreme Court in its decision considered that:

a. Notaries as public officials should carry out their duties in accordance with the provisions of the Notary Law (UUJN), which requires deeds to be made in the presence of the parties and factually reflect their wishes.

b. In this case, it was proven that the deed was made without the presence of the relevant parties and only based on documents whose truth had not been verified.

c. Thus, the element of "anyone who makes a false letter or falsifies a letter in such a way that it can give rise to a right, obligation or release from debt, or can be used as information about an event with the intention of using or ordering another person to use the letter as if its contents were true and not falsified" has been fulfilled.

3. Justification of Case Study Number 303 K/Pid/2004

Based on the case study above, in order to be able to test the authenticity of a forged notarial deed, it is necessary to understand the form and function of a notarial deed. In the practice of notarial office, at least the form of a notarial deed is divided into two, namely:

1. Deeds made by officials, called relaas deeds or official deeds (ambtelijke acten) For example, Deed of Minutes of Meeting of Limited Liability Companies

made by a Notary; Minutes of Opening of Safe-deposit box of a Limited Liability Company Banking; Minutes of Lottery Drawing; The relaas deed or official deed describes an action carried out or a condition seen or witnessed and experienced by the maker of the deed, namely the Notary himself in carrying out his position as a Notary. A deed containing a description of the things seen and witnessed and experienced is called a deed made by a Notary (as a Public Official);

2. A deed made before an official is often called a party deed (partij acten).

For example, a lease agreement for a plot of land and buildings from a member of the community, a deed of sale and purchase, a deed of gift of money, a will, a power of attorney and others. This party deed includes information from the people acting as parties in the deed.; The party deed contains a story of things that happened because of actions carried out by another party before a Notary, meaning that which is explained or told by another party to the Notary in carrying out his/her duties and for that purpose, the party concerned deliberately comes to the Notary and provides the information or carries out the legal act before the Notary, so that the information or action is stated by the Notary in an authentic manner.

From the description of the form of the deed above, it can be explained that the authentication requirements for "notarial deeds made by officials (deed relaas) and deeds made before officials (partij acten)" have different elemental materials. that the authenticity requirements for deeds made before a notary (partij acten) include the following:

1. Theappearing before a notary;

2. Thethe facer makes his point;

3. The notary establishes the intentions of the parties in a deed;

4. The notary reads the wording in the form of the deed to the audience;

5. TheThe person appearing signs, which means that he/she confirms the matters contained in the deed, and the signing must be done at that time.

6. Attended by mostat least 2 (two) witnesses, unless otherwise determined by law.

Furthermore, the requirements for authenticating a deed made by a notary (ambtelijke acten) include:

1. The notary describes an action or situation that he saw, witnessed and experienced;

2. The notary confirms the actions or circumstances that he witnessed or experienced;

3. The will of the parties is read out and signed as a confirmation of the deed;

In addition to having different forms, notarial deeds have two functions, namely formal functions (formalitas causa) and evidentiary functions (probationis causa). Formalitas Causa means that the deed functions to complete or perfect a legal act, so it is not the validity of the legal act. In this context, the deed is a formal requirement for the existence of a legal act. Probationis causa means that the deed functions as evidence, because from the beginning the deed was made intentionally for evidence in the future. The written nature of an agreement in the form of this deed does not make the agreement valid but only so that it can be used as evidence in the future.

Probationis Cause Notarial deeds have the power of proof in 3 (three) matters, namely as follows:

1. The ability to prove outwardly (uitwendige bewijskracht), is the ability of the deed itself to prove its validity as an authentic deed (acta publica probant seseipsa) and in accordance with the legal rules that have been determined regarding the requirements of an authentic deed, then the deed is valid as an authentic deed until proven otherwise, meaning until someone proves that the deed is not an authentic deed in appearance, in this case the burden of proof is on the parties who deny the authenticity of the notarial deed, the parameters for determining a notarial deed as an authentic deed are the signature of the notary concerned, both on the minutes and copies and the existence of the beginning of the deed (starting from the title) to the end of the deed;

2. Formal Proof Ability (formele bewijskracht), a notarial deed must provide certainty that an event and fact mentioned in the deed was actually carried out by the notary or explained by the parties appearing at the time stated in the deed in accordance with the procedures determined in making the deed, formally to prove the truth and certainty regarding the day, date, month, year, time (hour) of appearing and the parties appearing, the initials and signatures of the parties/appearers, witnesses and notary, as well as proving what was seen, witnessed, heard by the notary (in the official deed/minutes), and recording the statements or statements of the parties/appearers;

3. Material Proof Ability (materiele bewijskracht), is about the importance of certainty of the material of a deed, that what is stated in the deed is valid proof for the parties who made the deed or those who receive rights and applies to the public unless there is proof to the contrary (tegenbewijs), the information or statements of the parties must be considered true, the words that are then stated/contained in the deed apply as true or everyone who comes before the notary whose statement is then stated/contained in the deed must be considered to have said so correctly, if it turns out that the statements/information of the parties are not true, then this is the responsibility of the parties themselves, the

Notary is free from such things, thus the contents of the notarial deed have certainty as the truth, becoming valid evidence for/between the parties and the heirs and recipients of rights.

Article 1888 of the Civil Code states that "the power of proof with a writing lies in the original deed". If the original deed exists, then copies and extracts can only be trusted as long as the copies and extracts are in accordance with the original which can always be ordered to be shown. Article 1889 of the Civil Code states that if the original legal title is no longer there, then the copy provides evidence, with the following provisions:

1. Copy first (gross) provides the same evidence as the original deed; the same applies to copies made by order of the Judge in the presence of both parties or after both parties have been legally summoned as well as copies made in the presence of both parties with their consent;

2. The copy that made after the issuance of the first copy without the mediation of a Judge or without the consent of both parties either by the Notary in whose presence the deed was made, or by a substitute or by an employee who because of his position keeps the original deed (minut) and is authorized to provide copies, can be accepted by the Judge as perfect evidence if the original deed has been lost;

3. When a copy made according to the original deed is not made by the Notary before whom the deed was made, or by a substitute, or by a public official who because of his position keeps the original deed, then the copy cannot be used as evidence at all, but only as written initial evidence;

4. Copy authentic from an authentic copy or from a private deed, according to the circumstances, can provide written preliminary evidence;

Thus, to test the authenticity of a forged notarial deed and to state the existence of an act or deed of forgery against a notarial deed is proof of the nature and values of the authenticity of the notarial deed. Proving a forged notarial deed must be able to be distinguished from each of its aspects, both externally, formally and materially.

Based on the description and case study above, the defendant was proven not to meet the authenticity requirements of the deed made before a notary (partij acten), namely the deed was made without the presence of the parties who should have been present plus the absence of official approval from the related parties. Therefore, the defendant was proven legally and convincingly guilty of committing the crime of forgery of documents.

3.2 Legal Implications of the Authenticity of Forged Notarial Deeds

The rampant forgery of notarial deeds can result in all parties being harmed.

The loss is certainly not only felt by the parties or those concerned but also by the notary himself. Accuracy and caution are fundamental principles in every deed formulation. Mistakes in making a deed must be eliminated because a notarial deed is a perfect evidence. Notaries are required not to make mistakes and are responsible for every deed product they make. Given the authority of a notary as an official who makes authentic deeds, there is a responsibility that cannot be taken lightly.

The free will of each person cannot be predicted. Humans can do good or bad at any time depending on the urge of that free will. This reality is often unavoidable in the practice of notarial office. The notarial deed product which should contain all the truth (both externally, formally, and materially) is actually contradictory or considered contrary to the truth. The reality of forgery in notarial deeds has fatal consequences for all parties including the notary who made it.

In the context of forgery of notarial deeds, it has implications for 2 (two) things, namely: to the object of the deed product and also to the subject of the parties or those interested and also the notary who made it. The legal implications of forgery of notarial deed products result in "the deed product being canceled (verniegbaar), null and void (niegtigheid van rechtswege), having no binding legal force, the deed is invalid, or is degraded to a deed under hand. (open baar heid)". The legal implications for the subject can be held accountable and subject to sanctions, both criminal, civil, and administrative. Threats to objects and subjects due to forgery in notarial deeds must see various sufficient bases and reasons to be considered.

Notarial Deeds can be Canceled (verniegbaar) when they do not fulfill the subjective elements as stated in Article 1320 paragraph (1) and (2) of the Civil Code, namely Agreement to bind oneself (de toet-semming van degenen diezich verbinden) and Capacity to make a contract (de bekwaam heid omeene verbintenis aan ter gaan). Agreement means that the parties or each party mutually declares their respective wills to conclude an agreement or the statement of one party is "suitable" or in accordance with the other party. The statement of will does not always have to be stated explicitly but can be through behavior or other things that express the statement of the will of the parties. Agreement is the will of the parties formed by two elements, namely the element of offer and the element of acceptance. Offer (aanbod; offerte; afer) is defined as a statement of will containing a proposal to enter into an agreement. While acceptance (aanvarding; acceptatic; acceptance) is a statement of agreement from the other party who is offered.

The capacity to make a contract (de bekwaam heid omeene verbintenis aan ter gaan) referred to in Article 1320 paragraph 2 of the Civil Code is the capacity to perform legal acts. The capacity to perform legal acts is interpreted as the

possibility to perform legal acts independently that bind oneself without being able to be challenged. The capacity to perform legal acts is generally measured from the following standards: Person (individual), measured from the standard of maturity (meerdejarig); and Rechpersoon (legal entity), measured from the aspect of authority (bevoegheid).

Specifically regarding Competence, it is not only because of not being old enough to act from a legal perspective, but the Competence is also related to the Authority to act. "This authority to act includes/for example: For himself/herself, as a power of attorney, as a substitute power of attorney, a husband/wife who requires the consent of a husband/wife, in his/her position (Private Legal Entity) or in his/her position (Public Legal Entity), as a Guardian, as a Custodian, as a Curator, as a Liquidator, as a Parent who exercises authority for his/her biological child who is not yet an adult."

The authority to act must be formally proven. Notaries are required to always request/see formal evidence related to the authority to act. When a notary makes a deed at the request of the parties, it turns out that the notary does not see formal evidence regarding the authority to act and is included in the deed, then the notary is required to be responsible for this. Therefore, notaries are required to be more careful regarding the authority to act so that there is no potential that can cause the notarial deed to be canceled by the parties who feel aggrieved.

Notarial Deeds in this category can be canceled but are binding on the parties concerned as long as no one files for cancellation to the court. Notarial Deeds are declared null and void (niegtigheid van rechtswege), when there is a mechanism for making them that violates the substance of the UUJN regarding the authority of notaries in making authentic deeds and Article 1320 paragraphs 3 and 4 of the Civil Code which are objective requirements in making an agreement, namely regarding a certain matter and the cause or causes that are permitted.

Notarial deeds that are declared null and void by law are influenced by several factors, this is because the deed was made in violation of and not fulfilled:

1. The external elements of an authentic deed (Widespread knowledge);

2. Formal elements of an authentic deed (Formal evidence);

3. Elementmateriel (Materiele bewijskracht);

4. Elements of Article 1320 paragraph 3 of the Civil Code concerning a certain matter (Eenunderwork);

5. Elements of Article 1320 paragraph 4 of the Civil Code concerning permitted powers (Eengeoorlofde oorzaak). Notarial Deeds do not have

binding legal force.

A Notarial Deed that has met the formal, material and external requirements is not declared as a Notarial Deed that does not have binding legal force. A Notarial Deed is declared as a deed that does not have binding legal force, when there is a court ruling regarding the deed due to a lawsuit by the related party. Based on the lawsuit, the court provides its legal considerations before deciding to provide such a conclusion. A Notarial Deed is declared invalid when in relation to its validity in the process of making it has violated the formal requirements in making a Notarial Deed as stipulated in the UUJN. To declare a Notarial Deed invalid, strong evidence is needed based on a district court decision. When there is no court ruling declaring the deed void, the deed remains valid. This is based on the principle of presumption of validity in assessing Notarial Deeds, namely:

1. This presumption of validity principle can be used to assess a notarial deed, namely a notarial deed must be considered valid until a party declares the deed invalid. To declare or judge the deed invalid must be filed with a general court. During and as long as the lawsuit is ongoing until there is a court decision that has permanent legal force, the notarial deed remains valid and binds the parties or anyone interested in the deed;

2. This principle of presumption of validity relates to deeds that can be cancelled, which is an act that contains a defect, namely the notary's lack of authority to make a deed in an outward, formal manner,material, and does not comply with the legal regulations regarding the making of notarial deeds and this principle cannot be used to assess a deed as null and void by law, because a deed that is null and void by law is deemed to have never been made.

Notarial Deeds Have the Power of Proof as Private Deeds (open baar heid). When in the making of an authentic deed, it is found that there are procedures that are not fulfilled, and the procedural error can be proven clearly, then the deed can be submitted to the court and if it is proven that there is an incorrect procedure, then the court can declare the authentic deed as a deed that has the power of proof of a private deed. When the level of proof of an authentic deed has been degraded to a private deed, then its evidentiary value is submitted to the panel of judges to assess the truth of the deed. Based on Article 1869 of the Civil Code, it is explained that a notarial deed that is qualified to have the power of proof as a private deed because the relevant public official is not authorized to make it or does not have the relevant public official and/or is defective in its form.

Legal implications for the subject due to forgery of notarial deeds, then can be subject to responsibility and sanctions both criminally, civilly, and administratively. By referring to the general legal theory which states that

everyone, including the government, must be responsible for every action, whether due to error or without error. Regarding the issue of official accountability according to Kranenburg and Vegting there are two underlying theories, namely:

1. Theoryfautes personalles, namely the theory that states that losses to third parties are charged to officials whose actions have caused the loss. In this theory, the burden of responsibility is directed at humans as individuals;

2. Theoryfeutes de services, namely the theory that states that losses to third parties are charged to the agency of the official concerned. According to this theory, responsibility is charged to the position. In its application, the losses incurred are also adjusted to whether the error committed is a serious error or a minor error, where the severity of an error has implications for the responsibility that must be borne.

Abdulkadir Muhammad stated that in the theory of responsibility for unlawful acts (tort liability) it is divided into several theories, including:

1. Responsibility for unlawful acts committed intentionally (intertional tort liability), the defendant must have committed an act in such a way that it harms the plaintiff or knows that what the defendant did would result in a loss;

2. Responsibility for unlawful acts committed due to negligence (negligence of foult) relating to morals and laws that are intermingled;

3. Absolute liability for unlawful acts without questioning fault (strict liability), this is based on whether the act was committed intentionally or unintentionally, meaning that even though it is not his fault, he must still be responsible for the losses arising from his actions.

In the criminal law aspect, a Notary can be held responsible if it can be proven that the Notary is guilty. In relation to the Notary's mistake, the term used is beroepsfout. Beroepsfout is a special term that refers to mistakes, these mistakes are made by professionals with special positions, namely Doctors, Advocates and Notaries. A person who is found guilty must meet the following elements: able to be responsible; intentionally or negligently; no excuse.

The ability to be responsible is a state of psychic normality and maturity or intelligence of a person which leads to three abilities, namely: being able to understand one's own values and consequences; being able to realize that the act is permissible according to society's view; being able to determine the intention in carrying out the act.

Intention (dolus) according to criminal law "is an act that is realized, understood and known as such, so that there is no element of misconception or misunderstanding" (Muljatno, 1993). While "negligence (culpa) is the

occurrence of an act because of not thinking at all about the consequences or because of not paying attention to it, and this is due to a lack of caution, and the act is contrary to his obligations" (Saleh, 1983). The discovery of a legally defective deed is caused by a notary who is not careful/understands the legal rules in depth. This does not happen intentionally by the notary. This problem occurs more due to the notary's lack of caution in making a deed.

According to criminal law, a forgiving reason is a reason that erases the mistake that was made. In fact, the act that was committed was against the law, but the mistake was forgiven, so that in such a case there was no mistake that resulted in the perpetrator being held accountable. The forgiving reason in criminal law cannot be adopted to be applied in this case, because it is considered irrelevant. In the case of making a legally defective deed, what can be used as a forgiving reason, so that it is considered that there was no mistake on the part of the Notary, are: Cannot be burdened with responsibility; Mental illness; Very young age; Physical disability; Mistakes or errors that can be forgiven regarding the unlawful nature. This means that the person does not know and should not know that he is committing an unlawful act (forgivable mistake).

If the elements of the above error are fulfilled, then the Notary who has made a legally defective deed is guilty in addition, so as far as the error is actually culpa, in this case the position must be adopted, that it is not the subjective condition of the person concerned that determines the extent of his responsibility, but must be based on objective considerations. In this case it must be asked whether a normal and good Notary should not be able to know the desired consequences, if the answer is yes then in that case there is an error, and if not then the Notary concerned cannot be blamed.

Based on Article 15 UUJN, the authority of a notary is regulated. A notary is authorized to make authentic deeds, regarding all acts, agreements and provisions required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of creation, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the creation of the deeds is not also assigned or excluded to other officials or other people determined by law. Article 1865 and Article 1870 of the Civil Code, explain that the existence of an authentic deed as a realization of the Notary's authority is a perfect evidence to argue, confirm or deny the rights of others. A notary who makes a legally defective deed is considered to have committed an unlawful act by abusing the authority he has as mandated in Article 15 UUJN concerning the authority of a notary.

This state of abuse of authority is increasingly evident with the element of loss suffered by others, related to the making of a legally defective deed. The losses suffered by the parties are very apparent when the deed is cancelled as a final

consequence of the legally defective deed.

An unlawful act is an act that causes a loss, and normatively the act is subject to the provisions of Article 1365 of the Civil Code. The form of liability adopted by Article 1365 of the Civil Code is liability based on fault. This can be seen in the provisions of the article which requires the existence of a fault on the part of the perpetrator in order to arrive at a decision whether a person's act is an unlawful act. In addition, it must be understood that the element of fault must be proven by the party suffering the loss as regulated in Article 1865 of the Civil Code and 163 HIR, and regarding the existence or absence of a Notary's fault, it has been explained in the previous discussion.

In addition to being held criminally liable, a Notary who makes a legally defective deed can be sued in civil court on the basis of breach of contract or an unlawful act onrechtmatige daad. This can be justified where there is a contractual relationship between two parties, where the nature of the Notary's act has given rise to a breach of contract, which error can be accompanied by the existence of onrechtmatige daad from the same act. In practice, a lawsuit based on breach of contract is included as a primary lawsuit while a lawsuit based on onrechtmatige daad is included as a subsidiary lawsuit.

Regarding unlawful acts by a Notary, apart from being subject to the provisions of Article 1365 of the Civil Code, the provisions of Article 1367 of the Civil Code also apply, namely liability for errors committed by Notary employees. Article 1367 paragraph (1) of the Civil Code states: "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control." Article 1367 paragraph (3) of the Civil Code states: "Employers and those who appoint other people to represent their affairs, are responsible for losses incurred by their servants or subordinates in carrying out the work for which these people are used."

Based on the description above, it is regulated that when a notary in carrying out his/her duties is proven to have committed a violation, then the notary must be held responsible by being imposed or given sanctions, in the form of civil sanctions, administrative sanctions, criminal sanctions, a notary's code of ethics or a combination of sanctions. These sanctions have been regulated in such a way, previously regulated in the Notary's Regulation (PJN) and now the UUJN and the notary's code of ethics. In practice, it is found that a legal action or violation committed by a notary can actually be subject to administrative or civil sanctions or a code of ethics, but is then withdrawn or qualified as a criminal act committed by a notary. Thus, a notary as a public official must be responsible for the deed he/she made if it is proven that there is a legal rule that has been violated in the notarial deed.

4. Conclusion

Notarial deeds as authentic deeds have perfect legal force in proof, both formally and materially. The deed is considered true until proven otherwise. Therefore, falsification of authentic deeds by a notary is a serious violation of the authority and responsibility of the notary's office as a public official. Forgery of an authentic deed by a notary can be subject to criminal sanctions as regulated in Article 263 of the Criminal Code concerning forgery of documents, because the notary has consciously and in bad faith included false or unreal information in the deed he made. In the Supreme Court Decision of the Republic of Indonesia Number 303 K/Pid/2004, it was proven that the notary in question had deviated from the procedure for making a deed and included false information that did not correspond to the actual circumstances. This act was proven to fulfill the elements of the crime of forgery of documents as referred to in Article 263 paragraph (1) and (2) of the Criminal Code. The decision confirms that notaries are not immune from the law and can be held criminally responsible if they are legally and convincingly proven to have committed an unlawful act, especially one that harms other parties and injures public trust in notarial institutions. Therefore, supervision of notaries needs to be tightened, and every report of alleged violations must be followed up professionally and accountably, both through ethical mechanisms by the Notary Honorary Council and through criminal law if there are elements of a crime.

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