

## Notary's Responsibility for Falsifying the Identity of the Parties in Making the Deed of Foundation Establishment

Ajeng Anjarsari

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, Email: [anjarsari040774@gmail.com](mailto:anjarsari040774@gmail.com)

**Abstract.** *An authentic deed essentially contains formal truth in accordance with what the parties told the Notary. However, the notary has the obligation to ensure that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the notarial deed become clear. Notaries as public officials are required to be responsible for the authentic deed that they have made. If the authentic deed that they have made occurs after a legal dispute occurs, then this can be questioned, whether the authentic deed was the Notary's mistake, or whether there was an agreement that was made between the Notary and one of them. Formulation of the problem What is the Notary's responsibility in making a deed that contains elements of falsifying the identities of the parties? The research method used is a legislative approach, namely legal research carried out by prioritizing research on library materials or also called secondary materials, in the form of normative law and how to implement it in practice by supported by data, a-data, used in order to obtain materials for analysis related to Notary's responsibility in making foundation deeds for falsifying the identities of the parties. The theories used are the theory of responsibility and the theory of legal certainty. From the results of this research, the responsibility of a Notary in making a deed that contains elements of falsifying the identities of the parties, is that a Notary is responsible for the material truth of the authentic deed he or she makes, if the Notary concerned is involved in a criminal act of falsifying an authentic deed. Information submitted by a party whose material truth is highly doubtful. Notary's testimony regarding the substance of the deed, legal certainty regarding the foundation deed made by the Notary, there is falsification of the identities of the parties, so that the legal certainty of the parties is made by the Notary, there is falsification of the identities of the parties, so this legal certainty also has implications for the position of the deed in the future.*

**Keywords:** Documents; Fake; Notary; Protection.

## 1. Introduction

Notaries as public officials, as well as as a profession, have an important role, especially in terms of providing legal certainty amidst the increasing traffic of legal actions in today's increasingly dynamic society. Normatively, the position of Notary is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Based on Article 1 number (1) states:

"A notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this law or based on other laws."<sup>1</sup>

The main authority of a Notary is to make authentic deeds, based on Articles 1870 and 1871 of the Civil Code<sup>2</sup>It is stated that an authentic deed is a perfect means of proof for both parties and their heirs as well as all people who obtain rights from them regarding what is contained in the deed. . This means that, in court, the judge must assume that what is stated in the notarial deed is true, as long as it cannot be proven otherwise, the burden of proof is placed on the party who denies the contents of the notarial deed.

Furthermore, in Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law, made by or in the presence of public officials who have authority for that purpose in the place where the deed is made.<sup>3</sup>

An authentic deed essentially contains formal truth in accordance with what the parties told the Notary. However, the notary has the obligation to ensure that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the notarial deed become clear.<sup>4</sup>As well as providing access to information including related laws and regulations. GHS Lumban Tobing, stated:<sup>5</sup>

"A deed made by a Notary is a deed that contains a "relaas" or authentically describes an action carried out or a condition seen or witnessed by the maker of the deed, namely the Notary himself, in carrying out his office as a Notary."

A deed made in this way contains a description of what was seen and witnessed and is called a deed made "by" (door) the Notary (as a public official). However, a

---

<sup>1</sup>Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries.

<sup>2</sup>Sjaifurrachman. 2011. Aspects of Notary Responsibility in Making Deeds, Bandung: Mandar Maju. p. 63.

<sup>3</sup>Ibid, p. 76

<sup>4</sup>GHS Lumban Tobing. 1999, Notary Public Position Regulations, Erlangga, Jakarta, p. 51.

<sup>5</sup>Ibid, p.52

Notary's deed can also contain a "story" of what happened because of actions carried out by another party to the Notary in carrying out his office and for which purpose the other party deliberately came before the Notary and gave that information or carried out that action before the Notary, so that The information or actions are confirmed by the Notary in an authentic deed. The deed is a deed made "before" (ten overstaan) a Notary.<sup>6</sup>

The evidentiary value of a Notarial deed by Habib Adjie is classified as follows:<sup>7</sup>

a. Outwardly (Uitwendige Bewijskracht)

The external ability of a Notarial deed is the ability of the deed itself to prove its validity as an authentic deed. Formal (Formal Bewijskracht)

The Notarial Deed must provide assurance that an event and fact stated in the deed must have been actually carried out by the Notary according to information from the parties present at the time the deed was made.

b. Material (Materiele Bewijskracht)

According to Herlien Budiono, "making" or "verlijden" as regulated in Article 15 paragraph (1) UUJN, is carrying out a number of works necessary for a deed (notary) to take place.<sup>8</sup> Making an authentic deed can be interpreted as carrying out every good deed in terms of formulating a deed, providing legal counseling or advice regarding making a deed so that the deed is completed and becomes an authentic deed which is within the authority of the Notary.<sup>9</sup>

The words stated in a Notarial deed act as truth for the parties who express their statements before the Notary. If it turns out that the statements/statements of the presenters are not true, then this becomes the responsibility of the parties themselves, and the Notary is free from responsibility for the problem.

The contents of a Notarial deed have the certainty of being true, being valid evidence for the parties and their heirs and assignees.<sup>10</sup>

A Notary, in carrying out his position, must act professionally based on a noble personality and always carry out his duties in accordance with applicable laws

---

<sup>6</sup>GHS Lumban Tobing, Op.cit p. 67

<sup>7</sup>Habib Adjie, 2009, Civil and Administrative Sanctions against Notaries as Public Officials, Second Printing, Refika Aditama, Bandung, p. 72

<sup>8</sup>Herlin Budiono, 2013, Basic Techniques for Making Notarial Deeds., PT. Citra Aditya Bakti, Bandung, p. 7.

<sup>9</sup>Ibid, p. 24

<sup>10</sup>Herlin Budiono, Op.cit, p. 74

and regulations and uphold the Notary's professional code of ethics as a guideline that must be adhered to. Public trust in a Notary is the public's trust in the authentic deed he or she has made, which is why the position of Notary is often called a position of trust. The trust of the government as a state agency that appoints and dismisses Notaries as well as the trust of the public as users of Notary services.

The authentic notary deed that has been issued contains legal defects, whether due to the Notary's error or negligence, as well as the Notary's own intention, so the Notary must be held accountable for his actions in making the authentic deed. A Notary may be subject to criminal law if it can be proven in court that intentionally or unintentionally the Notary worked together with the parties/facing parties to make a deed with the intent and purpose of benefiting only certain parties or parties or harming other parties.<sup>11</sup>

In practice, quite a few Notaries experience problems in connection with deeds they have made being canceled by court decisions as a result of the discovery of legal defects in their making, for example false statements. A Notarial Deed containing false information can occur if the information, identity and documents provided by the person present are incorrect. The Notary makes an authentic deed in accordance with the wishes of the parties. After the deed is completed, the deed is signed by the parties, witnesses and the Notary. Therefore, the deed can be said to be an authentic deed made based on false information.<sup>12</sup>

The Law on Notary Positions (UUJN) does not regulate specific criminal provisions for Notaries so that criminal sanctions against Notaries remain subject to the general criminal provisions of the Criminal Code. As in Article 266 of the Criminal Code, criminal acts related to ordering to include false information in an authentic deed are prohibited in criminal provisions. The application of criminal sanctions against Notaries must be seen in the context of carrying out the office of Notary, meaning that when making authentic deeds they must be based on legal regulations as in the UUJN.

One of the powers of a Notary in making authentic deeds is making a deed of foundation establishment. The role of a Notary in establishing a foundation is very important. A foundation that was established before the foundation law existed will need to make adjustments in order to obtain legal entity status. In practice, there are foundations which, at the time the foundation law came into effect, already existed and had carried out activities based on customs, doctrine

---

<sup>11</sup>Habib Adjie, 2008, Notary Law in Indonesia, Thematic Interpretation of Law Number 30 of 2004 concerning the position of Notary. Rafika Aditama, Bandung, p. 24.

<sup>12</sup>Ibid, p. 28

and jurisprudence, and the birth of the foundation at that time gave the foundation legal entity status, meaning that the birth of the foundation gave rise to a legal subject.<sup>13</sup>

A foundation that is recognized as a legal entity and has made adjustments but has not yet reported it to the minister, this foundation will receive the consequences as stipulated in the provisions of Article 39 of Government Regulation Number 63 of 2008, namely that it cannot use the word "foundation" in front of its name and must liquidate its assets and hand over the remaining liquidation proceeds in accordance with the provisions as intended in Article 68 of the Foundation Law.<sup>14</sup>

In the case in which the author raises the Decision of the Supreme Court of the Republic of Indonesia 1014/K/PID/2013 in the case of the lawsuit against the Decision of the Surakarta District Court Number:, among other things, it is stated that the formal equipment in question is in the form of two minutes of meetings of the supervisory board containing changes to the composition of the foundation's supervisory board, as well as one YBSS meeting minutes The meeting on December 19 2007 was stated to have taken place at the Foundation office on Jalan Juanda Number 47 Surakarta. However, in reality, the meeting was held at the residence of the hospital entrepreneur as Chair of the YBSS Advisory Board in the Haila complex.

Ninoek Poernomo then made a deed of minutes of the YBSS meeting Number: 58, dated April 15 2008 as an authentic deed of his Notary position. This deed was then registered with the Ministry of Law and Human Rights as an application for validation of the foundation. This NP game was discovered by the authorities, and was processed legally which resulted in a sentence of eight months in prison for NP. The same sentence was also handed down to RS.

Based on the background of the problem described above, the author intends to compile this thesis with the title: "Notary's Responsibility for Falsifying the Identity of the Parties in Making the Deed of Foundation Establishment (Study of Supreme Court Decision No. 1014/K/PID/2013)"

The objectives to be achieved in this research are as follows: To know and analyze Notary's responsibility for falsifying the identity of the parties in making the deed of establishment of the Foundation.

---

<sup>13</sup>Criminal Code

<sup>14</sup>Henricus Subekti and Mulyoto, 2013, Solusi Foundation with the Enactment of PP No. 2 of 2013, Cakrawala Media, Yogyakarta, p. 3

## 2. Research Methods

This research uses the approach method used in this research is the Legislative approach. This type of research, namely normative law, is to obtain normative knowledge about the relationship between one regulation and another and its application in practice.

## 3. Results and Discussion

In the case of decision Number: 1014/K/PID/2013, where a Notary in his decision was proven to have made a mistake in the trial. that the Defendant's actions were proven to make the deed inconsistent with the actual situation, such as changing a deed without signature from all parties, so that the Defendant's actions fulfilled the elements as charged by the Public Prosecutor;

Based on the results of evidence of an appreciative nature regarding a fact, such reasons cannot be considered in the examination at the cassation level, because the examination at the cassation level only concerns whether a legal regulation is not applied or a legal regulation is not applied properly, or whether the method of adjudication is not implemented according to provisions of the Law, and whether the Court has exceeded the limits of its authority, as intended in Article 253 of the Criminal Procedure Code (Law No. 8 of 1981);

The juridical consequences and responsibilities for the deed of foundation made by a Notary which contains elements of unlawful acts in its formation and has obtained permanent legal force.

Forms of responsibility of a Notary who commits unlawful acts

### a. Civil Liability

A Notary has a form of civil responsibility when committing acts against the law, this concerns responsibility for deeds made by the Notary unlawfully. Unlawful acts committed by Notaries here are defined in both active and passive nature. In the active sense, that is, a Notary who carries out an action so that by his actions the Notary causes harm to another party. In the passive sense, the Notary does not carry out actions that constitute an obligation, thereby causing losses to other parties. The element of unlawful acts is meant by the existence of an act, carried out against the law, there is error and loss.

Notaries have material and formal responsibilities for the deeds they make. Regarding formal responsibility, namely being responsible for the validity of the authentic deed he has made and if it turns out there is a legal defect so that the deed loses its authenticity and harms interested parties. Meanwhile, regarding

material responsibility for deeds made before a Notary, it needs to be emphasized that the Notary's authority in making authentic deeds does not mean that the Notary can freely, according to his wishes, make authentic deeds without the parties requesting the deed to be made.

If a Notary commits an unlawful act, in this case it must be interpreted broadly, it is an act that does not only violate the law. Acts against the law must be defined in terms of violating propriety, decency or the rights of other people and causing harm to other people. An act can be categorized as an unlawful act, if the act violates another person's rights, is contrary to the perpetrator's legal obligations, morality and propriety in society.

A notary who commits an unlawful act based on Article 1365 of the Civil Code, states that every unlawful act that causes loss to another person requires the person whose fault it was to cause the loss to compensate for the loss. So this article is the basis for declaring that the actions carried out by the Notary are unlawful.

The civil liability of a Notary for unlawful acts will be determined in court. Judges who handle civil cases involving notaries must look for the formal truth of the authentic deed, based on what is stated by the parties. This formal truth is obtained from the facts presented by the parties in the trial.

A Notary can also be materially liable, if legal advice given by the Notary to the parties either has occurred or will occur and then there is an error in the legal advice given by the Notary. If an authentic deed is made, the Notary does not provide a detailed explanation and access to the legal action that will be made to the parties so that one of the parties feels cheated due to their ignorance, then for this mistake the Notary is responsible for the losses suffered by the parties. That the Notary must pay attention when making a legal act must pay attention to legal protection for the Notary himself. A Notary must be careful and serious in carrying out his office.

The Notary's responsibility in civil liability for unlawful acts committed by the Notary is in the form of sanctions for reimbursement of costs, compensation and interest for the claims of parties who feel disadvantaged by the Notary's making an authentic deed. The amount of compensation is based on a legal relationship between the Notary and the parties. If a party is harmed as a direct result of an authentic notarial deed, the party who feels aggrieved can file a civil lawsuit against the Notary. It can be concluded that the claim for compensation to the Notary is not based on the assessment or position of evidence, but is based on the legal relationship that exists or exists between the Notary and the parties.

Article 41 UUJN-P states that there are civil sanctions, if a Notary commits an unlawful act or violates Article 38, Article 39 and Article 40 UUJN-P, then the Notary's deed will only have proof as a private deed.<sup>15</sup>As a result of such an authentic notary deed, it can be a reason for parties who suffer losses to demand reimbursement of costs, compensation and interest from the Notary.

If for some reason a Notary's authentic deed becomes a private deed, then the proof of the deed cannot be used as evidence. The value of an authentic deed that has become a private deed has the power of proof as evidence because its value is only limited to the private deed. Losses cannot be claimed for the degradation of an authentic Notarial deed. Likewise, with an authentic deed that is null and void by law, as soon as the authentic deed is null and void by law, the authentic deed is deemed to have never existed or was never made.

Claims against the Notary that can be made should be in the form of fees, compensation and interest, based on the legal relationship between the Notary and the parties, not any connection with the authentic deed. Because it is more about the loss of the parties due to a legal action made by a Notary.

Accountability must be based on evidence of errors made by the Notary. In civil law, the elements of an unlawful act that has been made by the Notary must first be fulfilled, as well as any losses caused by what the Notary has done to the parties who have a legal relationship so that the Notary can be held accountable for the consequences suffered by the parties. Civil liability of a Notary who commits an unlawful act in the form of sanctions for reimbursement of costs, compensation and interest for losses suffered by the parties due to legal actions that have been made by the Notary.

#### b. Administrative Responsibilities

Notaries who commit unlawful acts in making authentic deeds may be subject to administrative sanctions. Administrative sanctions that can be imposed on Notaries who commit unlawful acts are: reparative sanctions, punitive sanctions and regressive sanctions.

1) Reparative sanctions are sanctions given to correct violations that have been committed, so that legal order returns.

2) Punitive sanctions are punitive sanctions for what a Notary has done.

---

<sup>15</sup>Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions



3) Regressive sanctions are sanctions as a form of action in response to a violation of the law.

Several types of administrative sanctions are known in the Administrative Law literature, including:<sup>16</sup>

- 1) Real execution
- 2) Direct execution (parate execution)
- 3) Withdrawal of a permit

The imposition of administrative sanctions is carried out by the agency authorized to provide administrative sanctions, in this case the Minister of Law and Human Rights which is delegated to the Notary Honorary Council. Administrative sanctions are a responsibility for what the Notary has done, so the Notary should be given administrative sanctions. This administrative sanction is given through the imposition of sanctions by the Notary Honorary Council, in the form of an oral warning and a written warning.

The Notary's Honorary Council has the right to impose sanctions on Notaries in the form of: temporary dismissal for 3 (three) - 6 (six) months and dishonorable dismissal by the Notary's Honorary Council. Based on the recommendation of the Notary Honorary Council which is then submitted to the Minister, based on the recommendation of the Notary Honorary Council, a Notary can dismiss a Notary honorably up to dishonorable dismissal.

#### c. Responsibilities of the Notary Professional Code of Ethics

A Notary in carrying out his profession must behave professionally, have a good personality and uphold the dignity and honor of the Notary profession, apart from that, the Notary is obliged to respect his colleagues and work together to maintain and uphold the honor and good name of the organization as stated in the Notary professional code of ethics. Notaries are also responsible for the profession they carry out.

A notary in carrying out his profession, if he commits a violation, is obliged to be responsible for the mistake he has made. In the event of a violation of the professional code of ethics, the Notary Honorary Council has the authority to conduct an investigation into the violations that the Notary has committed. The Notary Honorary Council has the authority to impose sanctions on Notaries who commit violations in carrying out their profession as Notaries. Article 6 paragraph

---

<sup>16</sup>Op.Cit, Habib Adjie II, p. 108

(1) and paragraph (2) of the Notary Professional Code of Ethics, provides sanctions that can be imposed on members of the Indonesian Notary Association (INI) with the following provisions:<sup>17</sup>

1) Sanctions imposed on members who violate the Code of Ethics can be in the form of:<sup>18</sup>

a). Reprimand;

b). Warning;

c). *Schorsing* (dismissal temporary) from membership of the Association;

d). *Onzetting*(dismissal) from membership of the Association; And,

e). Dishonorable dismissal from membership of the Association.

2) The imposition of sanctions as outlined above on members who violate the Code of Ethics is adjusted to the quantity and quality of the violations committed by the member.

If a Notary is proven and has been proven guilty of violating the Notary's professional code of ethics, the Notary concerned can be subject to ethical sanctions by the Notary Honorary Council. The ethical sanctions given by the Notary Honorary Council do not necessarily revoke his position as a Notary. Ethical sanctions are limited to the Notary concerned who has been proven to have violated the professional code of ethics, having his or her Notary membership revoked or dismissed. So that the Notary concerned can still carry out his position as a Notary and carry out other legal acts.

It's different if the Notary has committed an unlawful act that is not subject to ethical sanctions. Ethical sanctions are only for violations of the professional code of ethics, if it is outside the realm of the Notary's code of ethics, his position as a Notary can be revoked. Revocation of a Notary's position is under the authority of the Minister of Law and Human Rights, whether the revocation or termination is honorable or dishonorable.

---

<sup>17</sup>Notary Professional Code of Ethics. Indonesian Notary Association (INI)

<sup>18</sup>Ibid

#### d. Criminal Liability

Acts against the law in a criminal context or acts that are prohibited by law and punishable by crime have the following elements:<sup>19</sup>

1) Objective elements are elements that exist outside humans which can be:

a). An action or conduct that is prohibited and punishable by criminal sanctions, such as falsifying letters, perjury, theft.

b). A certain consequence that is prohibited and punishable by criminal sanctions by law, such as murder, assault.

c). Circumstances or things that are specifically prohibited and threatened with criminal sanctions by law, such as inciting, violating public decency.

2) Subjective elements, namely elements contained within humans. Subjective elements can be:

a). Accountable (toerekeningsvatbaarheid).

b). Error (schuld).

A notary can be said to have committed an unlawful act in the context of Criminal Law while also violating the code of ethics and UUJN, so that the terms of punishment become stronger. If this is not accompanied by a violation of the code of ethics or is even justified by UUJN, then perhaps this can eliminate the unlawful nature of an act with a justification.

Punishment against Notaries can be carried out with the following limitations:<sup>20</sup>

1) There is legal action from a Notary regarding the formal aspects of a deed that is deliberate, full of awareness and awareness and planned, that the deed is made before a Notary or by Notaries together (in agreement) to be used as a basis for committing a criminal act;

2) There is legal action by a Notary in making a deed before or by a Notary which, if measured based on the UUJN, is not in accordance with the UUJN;

3) The Notary's actions are not appropriate according to the agency authorized to assess the actions of a Notary, in this case the MKN.

---

<sup>19</sup>Liliana Tedjosapatro, 1991, Notarial Practice and Legal Practice Mall, Semarang: CV Agung, p. 51

<sup>20</sup>Op. Cit, Habib Adjie I, p. 124-125

If a Notary makes irregularities in a deed he has made, resulting in a criminal case, the Notary must be criminally responsible for what he has done. Criminal liability arises from the passing of objective censure (*verwijbaardheid*) to actions declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to criminal penalties because of their actions.<sup>21</sup>

This is based on the principle of not being punished if there is no mistake or "*actus non facit reum nisi mens sit rea*". It is impossible for people to be held responsible and punished if they have not done anything wrong. However, someone who commits a criminal act may not necessarily be punished. People who commit criminal acts will be punished if they make a mistake.<sup>22</sup>

A Notary who is subject to criminal sanctions must first prove the mistakes and violations he has committed, whether or not the Notary should be held accountable. Imposing criminal sanctions on Notaries must comply with the formulation of articles regarding violations in UUJN-P, the Professional Code of Ethics and the Criminal Code.

Errors or violations by the Notary must first be proven by the Notary Honorary Council to impose sanctions against the Notary. Because according to the Criminal Code, notaries can make mistakes or commit unlawful acts, but if the Notary's Honorary Council proves that the notary has not violated the provisions of UUJN-P and the Professional Code of Ethics, then a notary cannot or should not be held responsible and be subject to criminal sanctions.

The criminal responsibility of a Notary for the deed he makes is not regulated in the UUJN-P. Notaries are subject to criminal sanctions, if the Notary is proven to have committed a criminal act so that criminal sanctions can be imposed. Because UUJN-P only regulates provisions regarding authentic deeds and does not regulate criminal provisions if a Notary commits a criminal act. If a Notary commits a criminal act then it is up to each individual, and the provisions regarding criminal acts return to the Criminal Code.

Criminal acts are actions that are prohibited by a legal rule. This prohibition is accompanied by threats or sanctions in the form of certain penalties for those who violate the prohibition. In human life, there are actions that cannot be done because they conflict with Human Rights, namely a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the rule of law. , the

---

<sup>21</sup>Dwidja Priyatno, Legislative Policy on the Corporate Criminal Responsibility System in Indonesia, Bandung: CV. Utomo, 2004, p. 30

<sup>22</sup>Ibid, p. 65

government and every person for the sake of honor and protection of human dignity.<sup>23</sup>

Article 10 of the Criminal Code regulates the provisions for criminal sanctions. This article regulates the main punishment and additional punishment. The main penalties consist of the death penalty, imprisonment, imprisonment and fines. Additional penalties consist of revocation of certain rights, confiscation of certain items and announcement of the judge's decision. Article 38 of the Criminal Code regulates additional criminal sanctions which state that there is a revocation of rights. This article emphasizes that the existence of additional sanctions cannot be used as a basis for the accumulation or combination of criminal sanctions.

Practices found in the field in the jurisprudence of judges who impose criminal penalties on Notaries who commit acts against the law, do not find additional sanctions in the form of revocation of a Notary's office rights within the authority to make authentic deeds.

Criminal sanctions are the ultimum remedium, namely the last remedy, if code of ethics sanctions, civil sanctions and administrative sanctions cannot be applied because the formulation of sanctions is different and cannot prevent the Notary from repeating unlawful acts. Criminal liability of a Notary who commits an unlawful act, the Notary is responsible for his actions by undergoing criminal sanctions that have been decided against him by the judge.

In this case the Notary has juridical consequences for the Notary and the Notary's deed contains elements of unlawful acts

Article 1320 of the Civil Code states that for an agreement to be valid, four conditions are required:<sup>24</sup>

- a. agree with those who bind themselves;
- b. the ability to create an agreement;
- c. a certain thing; And,
- d. a legitimate cause.

In this case, professionals in this case should act actively by finding out whether the documents or information given to them are true to prevent the Notary from getting into trouble in the future, however, if you look back at the public

---

<sup>23</sup>Ilhami Bisri, 2005, Indonesian Legal System, Jakarta: PT Raja Grafindo Persada, p. 40

<sup>24</sup>Code of Civil law

prosecutor's indictment and from the chronology of the case, the Notary actually supports or it can be said to have helped one of the parties who was also a convict.

According to Article 16 paragraph (1) letter e UUJN requires Notaries as Public Officials to keep the contents of deeds confidential, the Notary Code of Ethics which is an internal regulation for group members also requires Notaries to act honestly, impartially and carry out the contents of the law and the Notary's oath of office. .

Regarding Notary obligations are also regulated in Article 3 of the Notary Code of Ethics, including:

- a. Have good morals, morals and personality;
- b. Respect and uphold the honor and dignity of the office of Notary;
- c. Maintain and defend the honor of the association;
- d. Act honestly, independently, impartially, with a full sense of responsibility based on the provisions of the law and the contents of the Notary's oath of office;
- e. Increasing knowledge and not limited to legal and notarial knowledge;
- f. Prioritize service to the interests of society and the State;
- g. Determine 1 (one) office at the place of domicile and that office is the only office for the Notary concerned in carrying out his/her position;
- h. Carrying out office, especially in making, reading and signing deeds, is carried out at the Notary's office, unless there are valid reasons.

The official explanation of the Notary Code of Ethics states that a Notary must have professional behavior with the following elements:

- a. Must demonstrate expertise supported by high knowledge and experience;
- b. Having moral integrity means that all moral considerations must underlie professional duties. Professional moral considerations must be aligned with societal values, manners and religion;
- c. Refers to honesty towards the parties and oneself;

- d. In carrying out the duties of the office, a Notary must not be materialistic and discriminatory;
- e. Notaries are obliged to uphold the Notary Code of Ethics.

It is a legal and ethical principle that certain information should not be disclosed, due to the inherent confidentiality of that information. This confidential information usually arises in professional relationships, including:

- a. Secrets arising from the relationship between the bank and the customer are known as bank secrets;
- b. Secrets arising from the relationship between government officials and the government itself are known as official secrets;
- c. Confidentiality arising from the accountant's relationship with the client;
- d. Confidentiality arising from the attorney's relationship with the client;
- e. Secrets arising from the doctor's relationship with the patient;
- f. Confidentiality arising from the Notary's relationship with the client;

In the author's opinion, in carrying out their duties, Notaries are expected to always adhere to and uphold the dignity of the profession as a position of trust and respect. As trusted public officials, it is hoped that their deeds will become strong evidence if there is a legal dispute in court. In practice, a Notary is often asked to testify in cases such as forgery which is a criminal law act. In legal science, counterfeiting is divided into:

- a. Material legal falsification, for example the signature or writing in a Notary's deed is forged after the deed is made by the Notary;
- b. Intellectual legal falsification, for example information contained in a Notarial deed is information that is not true.

When providing information to investigators, a Notary cannot ignore his oath of office as a Notary. Therefore, it is important for Notaries and investigators to understand the confidentiality content of a Notary's position. So that the Notary can provide information without ignoring the confidential nature of the Notary's position regarding the deed made by the Notary. So in practice the confidentiality of a Notary's position is difficult to maintain. This is because there are no regulations that specifically regulate the definition of public interest which must be upheld by Notaries.

That an untrusted Notary does not have the right to simply use his right of disapproval as he pleases, because this obligation to keep confidentiality has a strong public legal basis. However, in reality an individual obtains benefits from it, but the obligation to keep confidentiality is not imposed to protect that individual, but rather is imposed for the benefit of society.

a. Limitations of Notaries in Providing Information about Deeds as Witnesses in Investigation and Court Processes in Criminal Cases.

b. Obstacles to the Use of the Notary's Rejection Rights in Maintaining the Confidentiality of Deeds in Relation to the Rejection Rights Based on the Law on Notary Positions

#### **4. Conclusion**

Responsibility of a Notary in making a deed that contains elements of falsifying the identities of the parties, that a Notary is responsible for the material truth of the authentic deed he makes, if the Notary concerned is involved in a criminal act of falsifying an authentic deed. Information submitted by a party whose material truth is highly doubtful. The Notary's testimony relating to the substance of the deed will not be considered a violation of the Notary's right to refuse Article 4 paragraph 2 in conjunction with Article 16 paragraph 1 letter e in conjunction with Article 54 UUJN, because the obligation to keep the secret of the position has been invalidated by the crime of fraud.

#### **5. References**

- Adjie, Habib. (2008) Notary Law in Indonesia, Thematic Interpretation of Law Number 30 of 2004 concerning the position of Notary. Rafika Aditama: Bandung.
- Adjie, Habib. (2009). Civil and Administrative Sanctions against Notaries as Public Officials. Bandung Second Printing Refika Aditama.
- Aini, Nur. (2019). Notary's Responsibility for False Information Submitted by Applicants in the Deed of Establishment of a Limited Liability Company, Vol. 5 No. 2, August 2019.
- Bisri, Ilhami. (2005). Indonesian Legal System. Jakarta: PT Raja Grafindo Persada.
- Budiono, Herlin. (2013). Basic Techniques for Making Notarial Deeds. Bandung: PT. Aditya Bakti's image.



Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Foundation Law.

Hardianti, Eka Putri. (2016). Responsibility of a Notary Who Orders to Include False Information in a Deed in an Authentic Deed (Case Study of Authentic Decisions (Case Study of Semarang High Court Decision Number 83/PID/2016/PT SMG), Indonesian Notary Journal: Vol. 4, Article 1.

<http://www.indonesianotarycommunity.com>. Accessed July 26, 2023.

Kelsen, Hans. (2007). General Theory of Law and State, General Theory of Law and State, Basics of Normative Legal Science as Empirical Descriptive Legal Science, Somardi translation. Jakarta: BEE Media Indonesia.

Latumenten, Pieter. (2023) "Categorization of Formal and Material Falsification of Notarial Deeds Qualified as a Criminal Offense".

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries.

Priyatno, Dwidja. (2004) Legislative Policy on the Corporate Criminal Responsibility System in Indonesia, Bandung: CV. Utomo, 2004

Regulation of the Minister of Law and Human Rights Number 2 of 2016 concerning Procedures for Submitting Applications for Legalization of Legal Entities and Approval of Changes to the Articles of Association and Submission of Notifications for Changes to the Articles of Association and Changes to Foundation Data ("Permenkumham 2/2016).

Sjaifurrachman. (2011). Aspects of Notary Responsibility in Making Deeds. Bandung: Mandar Maju.

Subekti, Henricus and Mulyoto. (2013). Solusi Foundation with the Enactment of PP No. 2 of 2013. Yogyakarta: Cakrawala Media.

Tedjosapatro, Liliana. (1991). Notary Practice Mall and Criminal Law. Semarang: CV Agung.

Tobing, Lumban. (1999). Notary Position Regulations. Jakarta: Erlangga.