

Notary Protection of Authentic Deeds as Evidence in Criminal Cases

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Abstract. *The purpose of this study is to determine and analyze the implementation of notarial protection for authentic deeds as evidence in criminal cases, to determine and analyze the obstacles and solutions to the implementation of notarial protection for authentic deeds as evidence in criminal cases. The research method used in this thesis is the sociological legal method. The results of the study indicate that: Obstacles to legal protection for notaries as public officials if indicated in a criminal case, which is regulated in this Law. Authentic deeds that must still be made and stored conventionally. Currently there are no regulations regarding the clarity of notarial actions that can be categorized as unlawful acts when carrying out their duties and responsibilities. The legal protection for notaries when carrying out their duties and responsibilities is not yet clear. There is no legal certainty that there are limitations in filing lawsuits by the parties when a violation of the law occurs by a notary, which of course must first be based on the results of the examination and determination of the Regional Supervisor/Regional Supervisor regarding the truth of the violation of the Notary Code of Ethics when carrying out their duties and responsibilities. Thus, a solution was drawn to overcome this, namely creating a mechanism regarding the obligation to provide evidence by the Notary Supervisor at the regional level so that the determination of the MPN becomes the basis for the parties to be able to file civil or criminal lawsuits.*

Keywords: *Authentic Deed; Criminal Case; Legal Protection; Notary.*

1. Introduction

Based on the Notary's job regulations, namely Article 15 paragraph (1) Article 16 paragraph (1) letter (b), Article 58, 59, 63 and 65 of the Notary Law, a Notary is responsible for keeping Notary deeds and protocols throughout his term of office

and will be continued by the next Notary who replaces him. In a paradigm that still relies on paper media, space and relatively expensive maintenance or care work are needed to be able to secure it.¹ An error in carrying out a profession can be caused by a lack of knowledge or ignorance (*onvoldoende kennis*), lack of experience or lack of flying hours (*onvoldoende ervaring*) or lack of understanding (*onvoldoende inzicht*),² so that it can cause legal problems for the replacement Notary who currently officially holds the position of Notary. The deed issued or made by the Notary as a perfect evidence must have elements of perfection both in terms of material and formal, thus a Notary must be responsible for the deed he made.

The responsibility of a Notary as a public official includes the responsibility of the Notary's profession itself related to the deed, including: First, the Notary's civil responsibility for the deed he made. Responsibility in this case is the responsibility for the material truth of the deed, in the construction of an unlawful act. The unlawful act here is 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 unlawfulness here are the existence of an unlawful act, the existence of an error and the existence of a loss incurred. Second, the Notary's criminal responsibility for the deed he made.³ Notaries should know several standard methods for archiving protocols and documents that are their responsibility. These archives are always under their protection while the Notary is in office and will then be transferred to a replacement/other Notary or the Regional Supervisory Board if he/she dies, takes leave or retires.⁴ This is regulated in Law Number 30 of 2004, in Article 62.

The criminal acts that Notaries currently face when they are caught up in criminal law problems are of course closely related to a sense of honesty or trust in someone.⁵ Therefore, in general, this type of criminal act often occurs in various relationships or interactions in the midst of social interaction, generally between Notaries and clients and vice versa between clients and Notaries, which can trigger conflicts in the making of authentic deeds.

Notaries must obey the Notary Code of Ethics in carrying out their duties because if they do not obey the Code of Ethics, then the dignity of professionalism will be lost and the public will no longer trust Notaries. must also have high moral values because if a Notary does not have high moral values, the Notary will not abuse

¹R. Soesilo.2017, Criminal Code (KUHP), and its comments, Complete Article by Article, Bogor. Politea, p. 27.

²Article 15 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

³H. Budi Untung, 2002, Global Vision, Notary, Andi, Yogyakarta, pp. 33-44.

⁴Kunni Afifah, "Legal Responsibility and Protection for Notaries in Civil Law Against the Deeds They Make." Lex Renaissance. Vol.2. No. 1.(2017), P.151.

⁵Cindy Zakiyyatul, Gunanto, and Umar Ma"rub. "Implementation of Notary Responsibilities, for Losses Due to Notary Errors." Sultan Agung Notary Law Review (SANLAR) Vol. 3. No.1.(2021). p. 242.

the authority to provide services in accordance with applicable laws and regulations and will not harm the image of a Notary.⁶

Notaries in carrying out their duties must be guided by the UJN and the Notary Code of Ethics, while Notaries who commit violations will be subject to sanctions, Notaries cannot escape criminal or civil charges, meaning that all actions or work of Notaries will never be free from the sights of criminal or civil law where in carrying out their duties and obligations they must be legally accountable, including in all consequences for being subject to legal sanctions for violations of fundamental legal norms.⁷

As is currently happening at the Jakarta District Court on August 16, 2022, both in social and print media that where the Notary with the initials F and R committed an act that was legally and convincingly proven guilty of committing a crime together by falsifying authentic deeds and money laundering. As regulated in the criminal threat, from the results of the Jakarta District Court decision in 2022, it was proven that they had committed a crime as regulated in Article 264 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code Article 3 of the Republic of Indonesia Law Number 8 of 2010 concerning the Crime of Money Laundering in conjunction with Article 55 paragraph (1) 1 in conjunction with Article 56 paragraph (1) of the Criminal Code. Legally and convincingly, the Notary above committed a crime that was committed together, there are two elements, namely the objective element and the subjective element, the objective element is having goods that are wholly or partly owned by another person, the goods are in his possession or are not in his control because of a crime. While subjective is intentionally against the law. The meaning of possession is every act of controlling goods or something of a will to control goods on his real power and is an act as the owner of the goods, on his real power and is an act as the owner of the goods, which does not give the owner the opportunity to ask for it back, even refusing to return and hiding or denying the goods received and controlled can be stated as an act of possession.⁸

The imposition of criminal sanctions on Notaries must be based on the provisions of the Criminal Code, which means that the Notary will be punished based on the criminal act (delict) committed. Article 392 of Law Number 1 of 2023, Concerning the Criminal Code (KUHP) in Book Two Concerning Criminal Acts, CHAPTER XIII Concerning the Criminal Act of Forgery of Letters in the article reads: Punishable by imprisonment for a maximum of 8 (eight) years, anyone who forges Authentic Deeds. Article 392 paragraph (1) of Law No. 1 of 2023 of the Criminal Code. Where the law that is in the position of a Notary is the same as the general

⁶Manuaba, IBP Parsa. IW and Ariawan. IGK 2018. "Principle of Notary's Prudence in Making Authentic Deeds." *Journal of Scientists of Master of Notary Study Program.* Vol.2. pp. 59-74.

⁷Arif J. 2014. "Legal Review of Notary's Criminal Liability for Violations of Law on Deeds." *Legal Opinion Science*, Vol. 5. Page 2.

⁸Ary Yuniastuti, Jawade Hafidz, "Legal Review, Cancellation of Deeds and Notary's Liability." *Journal of Deeds* Volume 4. Number 2. June 2017, page 132.

public, who is not immune to the law, and can be held criminally responsible for the actions of Notaries F and R in Jakarta who commit criminal acts by participating or together, the Notary of course has an impact on his profession as a Notary.⁹Based on the description above, this study aims to identify and analyze the obstacles and solutions to notarial protection of authentic deeds as evidence in criminal cases.

2. Research Methods

The research method used in this thesis is the sociological juridical method, the specification of this research uses descriptive analysis, the type of data used in this study is primary and secondary data, data collection of research with interview techniques and heritage materials or document studies. The data analysis method used in analyzing data is qualitative analysis.

3. Results and Discussion

Notaries in carrying out their duties cannot be separated from the risk of being involved in legal cases which will ultimately result in complaints and reports to the Notary and even lawsuits in court. This happened in Semarang City, one of the Notary employees in Semarang City, IS, falsified documents related to land ownership in Semarang City. The original land certificate document by IS, who is an employee of one of the Notaries in Semarang City, was falsified and pawned by IS, IS's action made him profitable for himself but was detrimental to the owner of the land certificate and the name of the Notary was also tarnished by his actions. The Notary employee received Rp20,000,000.00 where it was known that IS had carried out his actions several times. IS's action was discovered when A (as the legitimate owner of the land certificate) who was going to submit an application and/or pawn his land certificate to the Bank, but when he was going to submit an application to pawn it to the Bank after being checked by the Bank, the certificate was fake by the Bank. This triggered or provoked the emotions and anger of A as the legitimate owner of the land certificate, after A came to Notary TH Semarang, who took care of his land certificate, the first thing the Notary did was to calm the emotions of the land owner, after an investigation by the Notary, it was found that IS as a Notary employee who was entrusted by the Notary where IS worked actually committed an unlawful act, namely by falsifying the land ownership certificate for A which he should have taken care of with trust. As a result, the Notary where IS worked was also subject to a criminal lawsuit, because he was considered to be involved in the fraud. Through a family approach, the Notary where IS worked then confirmed and was willing to be responsible for IS's actions and explained that he was not involved in the IS case, the examination by the Police also stated that the Notary where IS worked was not proven to have committed an unlawful act and was not involved with IS's

⁹Ismu Gunadi, and Jonaedi Efendi, 2015, Quick and Easy Understanding of Criminal Law, Kencana Prenadamedia Group, Jakarta, p. 14.

actions. Based on these two things, A did not continue the complaint to the Police.¹⁰

The responsibility of a Notary as a public official (*openbar ambtenaar*) is the responsibility for actions that emphasize work that requires technical skills and special expertise in the field of making authentic deeds professionally and the material truth of the deeds made. Having unquestionable quality of knowledge in serving clients and being able to work independently, carefully, quickly, still prioritizing caution in making authentic deeds that are carried out by a public official as a Notary. The legal responsibility of a Notary in carrying out professional duties is bound by the rules of law that regulate, and is required to be able to master all applicable legal rules. The responsibility of a Notary as a public official is related to material truth, including:

- a. The Notary's civil responsibility for the material truth of the deed made;
- b. The notary's criminal responsibility for the material truth of the deeds he makes;
- c. The Notary's responsibility is based on the Notary's position regulations regarding the material truth in the deed made;
- d. The responsibility of a notary in carrying out his/her duties is based on the Notary Code of Ethics.

The implementation of the duties and positions of a Notary is based on the integrity and high honesty of the Notary, the results of work in making deeds and maintaining protocols are very important in the application of evidentiary law, as authentic evidence concerning the interests of justice seekers, both personal interests and the interests of a business, must be supported by moral principles that can be accounted for. The demands of the function and role of a Notary, a Notary is needed who is qualified in knowledge, charity, faith, and piety and upholds the dignity of the Notary in providing legal services to the community. Notaries in providing good or professional services, there will be many parties who are harmed as a result of errors or negligence that have been made by the Notary. When the rules of law are obeyed, the risk for the Notary to face a lawsuit or lawsuit is very small for the Notary. However, lately it is often found that Notaries are facing legal problems, such as being summoned by the Police, either in the capacity of a sanction or suspect, and as a party being sued in court in a civil case. Notaries who violate the law in carrying out their duties either intentionally or due to negligence. The purpose of making a deed before a Notary is as strong evidence if at any time there is a dispute between the parties or there is a civil lawsuit or criminal claim from another party. If there is a civil lawsuit or criminal claim from one of the parties, it is possible that the Notary will

¹⁰Personal interview with Head of Criminal Investigation Unit AKP Budi Setiono, SH, as an investigator at the Semarang Police, Central Java Regional Police, on October 24, 2024.

be involved in the problems of the parties in dispute regarding the making of the deed made by the Notary. The parties who come to the Notary often when they come to ask for a deed to be made, the parties use fake identities or fake letters or documents, so that the Notary who tries to help formulate the wishes of the party in a deed actually becomes involved in legal problems and is even accused of participating or helping to commit a crime in the process of making the deed, even though the Notary is not authorized or obliged to check the authenticity of the documents submitted by the parties to the Notary. This is what makes a strong warning for Notaries to be careful in carrying out their duties as Public Officials in making Authentic deeds.¹¹

The implementation of supervision is the task of the Notary Supervisory Board in Semarang City in accordance with Article 1 paragraph (7) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.03-HT.03.10 of 2007 concerning the Taking of Minutes of Deeds and Summoning Notaries, which states that the Regional Supervisory Board is a body that has the authority and obligation to carry out supervision of Notaries domiciled in the Regency/City. Guidance is part of supervision. If one of the two is missing, its function will not run properly. In this discussion, the area of Semarang City is. Based on an interview with the Head of Pengda, the formation of Notaries in Semarang City currently amounts to 120 (one hundred and twenty) active people. Philosophically, after the enactment of the Notary Position Law, the Regional Supervisory Board (MPD) took over the duties of the District Court which supervises, examines, and imposes sanctions on Notaries at the Regency/City level. MPD also supervises Notaries related to summonses or lawsuits or including permits from MPD. The supervisory function carried out by the Regional Supervisory Council is more of an administrative nature.¹²In fact, the Notary Supervisory Board in Semarang City has not been able to protect Notaries who are involved in legal cases, even though it must be understood that a Notary cannot be arbitrarily reported by the parties without a prior ethical proof mechanism. It often happens that Notaries do not intentionally commit acts that violate the law, only because one of the parties is facing him. For example, the case above shows that a Notary is vulnerable to legal cases for actions that he should not be held accountable for. Before being held accountable as a citizen who can be reported criminally or civilly, a Notary who is a public official has rights protected by the Notary Law for the responsibilities and duties he carries out, first of all, against Notaries who are accused of violating the law is through administrative accountability related to his duties and responsibilities.

The administrative responsibilities of a Notary are regulated in detail in the UUJN. A Notary is assigned and responsible for registering and validating (waarmerken

¹¹Erllys, Fadlan, Ramon Nofrial, Soerya Respationo, and Emiyanti, "Legal Analysis of Notary's Responsibility for the Criminal Act of Forgery of Authentic Deeds", *Unes Law Review*, Vol.6. No.1, 2023, p. 3747.

¹²Personal interview with Muhammad Hafidh, as one of the Notaries/PPAT in Semarang City, on October 26, 2024.

and legalization) letters/deeds made underhand. If these provisions are not heeded, there will be legal consequences, the deed made by the Notary can become a deed underhand and the deed can be canceled or null and void by law. The administrative responsibility of a Notary will arise when obligations are not heeded as they should be. The administrative responsibility of a Notary can be requested through a Notary institution/organization, in contrast to criminal and civil responsibility which must be carried out through the court. However, the court through its decision can forward to the Notary organization to follow up on the decision that has been issued by the court. Determining the existence of a Notary's responsibility is that there must be an act of the Notary that can be punished or his actions that have violated the elements expressly regulated in the UUJN. An authentic deed can be qualified as violating administrative requirements if the making of the deed does not comply with the provisions of Article 39 and Article 40 of the UUJN.

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

The imposition of sanctions as outlined above is a Notary who violates the provisions in making authentic deeds adjusted to the quantity and quality of violations committed by the member. Regarding the imposition of temporary dismissal sanctions, as well as sanctions such as dismissal or dishonorable dismissal for violations as referred to in the UUJN are carried out in stages and continuously. Sanctions against Notaries in the form of temporary dismissal from their positions are intended so that Notaries do not carry out their duties temporarily, before sanctions in the form of honorable dismissal or dishonorable dismissal are imposed/given to the Notary. The imposition of this sanction can end in the form of reinstatement to the Notary to carry out his/her duties again or followed up with sanctions of honorable dismissal or dishonorable dismissal. To provide certainty, the temporary dismissal must be determined for a time, so that the fate of the Notary is not hanging. This temporary dismissal sanction is real coercion, while sanctions of honorable dismissal or dishonorable dismissal are included in the realm of sanctions for revoking a decision that is hanging.

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

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

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

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

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

A deed under hand has perfect evidentiary value as long as the parties acknowledge it. If the parties violate the provisions as stated in UUJN, then the deed in question still has perfect evidentiary value and binds the parties. A deed that is declared null and void by law, then the deed is considered to have never existed or never been made, something that has never been made cannot be used as the basis for a claim in the form of compensation for losses which is usually in the form of reimbursement of costs, compensation, and interest. A Notarial Deed that is null and void by law cannot be requested to provide reimbursement of costs, compensation, and interest. Reimbursement of costs,

compensation, and interest can be sued to a Notary based on the Notary's legal relationship with the parties who appear before the Notary. If there is a party who feels aggrieved by the deed made by the Notary, then the person concerned can directly file a civil claim with the Notary so that the Notary can be held civilly responsible for the deed he made. Claims for reimbursement of costs, damages and interest against a Notary, are not based on the position of evidence that has changed due to violating the provisions of the UUNJ, but are based on the legal relationship that occurs between the Notary and the parties who appear before the Notary. Even though the Notary has retired, the Notary must still be civilly responsible for the deeds he has made. In practice, Notaries are often made or placed as defendants by other parties, who feel that the legal actions he has taken in the deed are categorized as actions or legal acts of a Notary, together with other parties who are also mentioned in the deed. In the context of notarial law, the Notary's task is only to formulate the wishes of the parties in the form of an Authentic deed, by paying attention to applicable law. Based on this substance, it is clear that if the deed made by the Notary is problematic by the parties themselves, then the Notary does not need to be involved in this matter, because the Notary is not a party to the deed. The denial can be done by filing a civil lawsuit against the Notary in court, and the parties are required to be able to prove the things they want to deny, while the Notary is required to defend these aspects. This needs to be understood as the legal principle of Notaries, namely that the Notarial deed is an authentic deed, where the deed has perfect evidentiary power, so that if there is a person or party who wants to deny it or state that the deed is not true, then the party is required to prove the assessment or statement in accordance with the applicable legal regulations. In accordance with the legal construction of the position of Notaries in Indonesia, the first is that the Notary is not a party to the deed, and the Notary only formulates the wishes of the parties so that their actions are poured into the form of an authentic deed, namely a deed made and by the Notary. Based on such a legal construction, it is very difficult to accept logically if a Notary is made a defendant in relation to a deed made before a Notary. The Notary has the authority to carry out his/her duties as long as the authority is attached to him/her. The limit of the Notary's liability is as long as the Notary has the authority. Notaries who are on leave, retired, and who have been dismissed can no longer be held accountable, because they no longer have the authority. In daily activities or practices, it is often found that if a Notary deed is disputed by the parties or other parties, the Notary is often also drawn as a party who participated in or helped to commit a criminal act, namely providing false information into the Notary's deed. With this, it raises confusion, is it possible that the Notary intentionally made a mistake or was negligent together with the parties in making a deed that was intended to commit a criminal act. If a Notary is proven to have violated this, then it is mandatory for him to be given a sanction. In relation to the above, to request information from a Notary on a report from a certain party according to Article 66 of the UUNJ, then if a Notary is

summoned by the Police, Prosecutor's Office, or Judge, then the agency that wishes to summon must request the approval of the Notary's Honorary Council. 12 The provisions of Article 66 of the UUJN are imperative for the Police, Prosecutor's Office, or Judge, which means that if the Police, Prosecutor's Office and Judge ignore Article 66 of the UUJN, then it can be categorized as a violation of the Law. When someone is not allowed to be summoned, then the Police, Prosecutor's Office will summon the witnesses to the Notary's deed as stated at the end of the deed. This is not in accordance with the applicable Notary law, because the sanction is included in the formal aspect of the Notary which is an inseparable part of the Notary's deed itself. UUJN does not regulate criminal sanctions against Notaries, therefore if a criminal violation occurs by a Notary, the sanctions contained in the Criminal Code can be imposed, with the note that the Notary's criminalization is carried out with limitations; Notaries who are on leave, retired, and who have been dismissed can no longer be held accountable, because they no longer have the authority. In daily activities or practices, it is often found that if a Notarial deed is disputed by the parties or other parties, the Notary is often also involved as a party who participated in or helped commit a criminal act, namely providing false information in the Notarial deed. With this, it causes confusion, is it possible that the Notary intentionally made a mistake or made a mistake together with the parties to make a deed intended to commit a criminal act. If the Notary is proven to have violated this, then he must be given a sanction. In relation to the above, to request information from the Notary on the report of a certain party according to Article 66 of the UUJN, if the Notary is summoned by the Police, Prosecutor's Office, or Judge, then the agency that wants to summon must request the approval of the Notary Honorary Council. 12 The provisions of Article 66 of the UUJN are imperative for the Police, Prosecutor's Office, or Judges, which means that if the Police, Prosecutor's Office and Judges ignore Article 66 of the UUJN, then it can be categorized as a violation of the Law. When someone is not allowed to be summoned, then the Police, Prosecutor's Office will summon the witnesses of the Notary deed mentioned at the end of the deed. This is not in accordance with the applicable Notary law, because the sanction is included in the formal aspect of the Notary which is an inseparable part of the Notary deed itself. The UUJN does not regulate criminal sanctions against Notaries, so if a criminal violation occurs by a Notary, the sanctions contained in the Criminal Code can be imposed, with the note that the Notary's criminalization is carried out with limitations; Notaries who are on leave, retired, and who have been dismissed can no longer be held accountable, because they no longer have the authority. In daily activities or practices, it is often found that if a Notarial deed is disputed by the parties or other parties, the Notary is often also involved as a party who participated in or helped commit a criminal act, namely providing false information in the Notarial deed. With this, it causes confusion, is it possible that the Notary intentionally made a mistake or made a mistake together with the parties to make a deed intended to commit a criminal act. If the Notary is proven to have violated this, then he must be given a

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a. There is a legal action by the Notary against the external, formal, material aspects of the deed that are deliberate, conscious, planned as a deed to be made before the Notary or and the Notary together with the parties appearing as the basis for committing a crime. The evidentiary value of the Notary's deed from the external aspect is that the deed must be seen as it is, if someone considers the

¹³Habib Adjie (II), *Civil and Administrative Sanctions Against Notaries as Public Officials*, Refika Aditama, Bandung, 2008, p.24.

Notary's deed does not meet the requirements as a deed then the person concerned is obliged to prove the Notary's deed in the formal aspect must provide certainty that an event and fact stated in the deed was actually carried out by the Notary and explained by the parties appearing at the time stated in the deed. In terms of the material aspect, certainty about the material of a deed, that what is stated in the deed is valid evidence against the parties who made the deed.

b. There is a legal action by a Notary in making a deed before or by a Notary which, when measured based on the UUJN, does not comply with the UUJN.

c. The Notary's actions are not in accordance with the agency that has the authority to assess the actions of a Notary, in this case the Notary Supervisory Board, HD Stout stated that authority is "All the rules relating to the acquisition and use of government authority by public law subjects in public legal relations".¹⁴Based on Article 16 and Article 54 of the UUJN and the theory of authority of HD. Stout, it can be understood that a Notary has authority that is not possessed by someone who is not a Notary. The authority is granted by Article 16 and Article 54 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. A Notary cannot have full authority to guarantee the truth conveyed by the parties who appear before him, so that material and formal defects in preparing a deed based on the lies of the parties who appear before him are not the responsibility of the Notary as the maker of the deed. So that a Notary's lawsuit when there is a defect when the parties provide information that is not true in civil law will result in *obscuur libel*, *obscuur liber* means that the plaintiff's lawsuit is not clear or its contents are dark (*onduidelijk*). Also called, an unclear lawsuit formulation. In fact, in order for a lawsuit to meet formal requirements, the argument for the lawsuit must be clear and clear or firm. (*duidelijk*). This is because the Notary cannot ensure that the parties who appear before him and provide true information have told the truth before him. So that the proof against the Notary who is declared to have violated civil law can be said to be difficult when it is related to the implementation of his duties and responsibilities, because the Notary in carrying out his duties and responsibilities has been carried out based on a clear legal mechanism as regulated in the UUJN. Based on the dimensions of criminal law, a Notary who is carrying out his duties cannot immediately be punished for an act that he did not do. The reason an act can be punished and given misery to someone is a system in a criminal law that requires the fulfillment of the elements of *actus reus* and *mens rea*. In the Indonesian legal system, *actus reus* can be equated with the meaning of not being a crime, while *mens rea* is an error that is part of criminal responsibility. These two

¹⁴Ridwan HR., 2008, State Administrative Law, Raja Grafindo Persada, Jakarta, p. 110.

requirements are absolute requirements for a person to be sentenced, this can be seen in the following scheme.¹⁵

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

According to Muhammad Hafidh as one of the Notaries/PPAT in Semarang City, in 2023 there were around 2 Notaries who were reported to the Semarang City Pengda. Meanwhile, the 2 people who were reported to the Semarang City MPD/Pengda are currently being handled to what extent the action will be taken as the head of the Semarang City Pengda/MPD. Muhammad Hafidh then added that in 2024 it was still the same in the complaint to the Semarang City Pengda/MPD, 2 people were reported and are still being handled under the authority of the Semarang City Pengda/MPD. As a Notary in Semarang City, the role of the Notary Supervisory Board in providing legal protection for Notaries when caught in a legal case while carrying out their duties, even though the Notary who is carrying out his duties is not proven guilty/cannot be proven guilty, is almost non-existent, but the Notary concerned is taking legal action himself to defend himself.

Lack of concern regarding legal protection for Notaries when legal problems occur in carrying out their duties, shows that there has been legal uncertainty for legal protection for Notaries in carrying out their duties and responsibilities. According to Apeldoorn, legal certainty has two sides, First regarding the issue of the ability to form (*bepaalbaarheid*) law in concrete/real matters. This means that the parties seeking justice want to know the law in specific matters before starting a case. Second, legal certainty means legal security. This means protection for the parties against legal arbitrariness.¹⁶Based on Apeldoorn, it is clearly seen that Notaries in carrying out their duties do not/do not have clear access to know the limits of their responsibilities that can be accounted for in terms of implementing their roles and responsibilities as a Notary. In this case, Notaries are also vulnerable to legal arbitrariness as a result of legal uncertainty in the regulation of Notary protection. However, this automatically violates Article 28 D paragraph (1) of the 1945 Republic of Indonesia Constitution regarding equality before the law.

¹⁵Hanafi Amrani and Mahrus Ali, *Criminal Responsibility System; Development and Implementation*, Raja Grafindo Persada, Jakarta, 2015. p. 75.

¹⁶Shidarta, 2006, *Morality of the Legal Profession: An Offering of a Framework for Thinking*, PT. REVIKA Aditama, Bandung, pp. 82-83.

Based on the various explanations above, several things can be understood, namely:

1. There is no regulation regarding the actions of Notaries which can be categorized as unlawful actions when carrying out their duties and responsibilities.
2. The absence of/or regulation of clear legal protection for Notaries when carrying out their duties and responsibilities.
3. There is no clear legal certainty that there are limitations in filing lawsuits by parties when there is a violation of the law/legal case by a Notary which must first be based on the results of an examination and determination of the Supervisory Board regarding the truth of the violation of the Notary's code of ethics when carrying out his duties and authorities.

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

1. Making provisions for the mechanism regarding the obligation to provide evidence by the Notary Supervisory Board at the regional level first, so that the determination of the MPN becomes the basis for the parties to file a civil or criminal lawsuit. If the responsibility for the authentic deed as evidence is indicated in a criminal case, in this case it is intended that an in-depth investigation is carried out regarding the involvement and violation of the Notary's law when carrying out his duties and obligations and his authority, where the party most authorized to conduct an examination and in-depth investigation of the Notary's unlawful actions is the MPN.
2. Making provisions and legal certainty regarding legal protection mechanisms if the responsibility for authentic deeds as evidence is indicated in criminal cases for Notaries who are carrying out their duties and responsibilities.
3. Making provisions regarding the regulation of responsibility for authentic deeds as evidence indicated in criminal cases, and if it has not been proven or there is insufficient evidence, there is no need for sanctions to be imposed in relation to the issue of carrying out the duties and responsibilities of a Notary.

4. Conclusion

The obstacles that cause the problem of protection for Notaries who are carrying out their duties and responsibilities in the City of Semarang, currently there is no regulation regarding the clarity of Notary actions that can be categorized as unlawful actions when carrying out their duties and responsibilities. The legal protection for Notaries when carrying out their duties and responsibilities is not yet clear. There is no legal certainty that there are limitations in filing lawsuits by

parties when a violation of the law is committed by a Notary, which of course must first be based on the results of the examination and determination of the Regional Supervisor / Pengda of Semarang City, regarding the truth of the violation of the Notary Code of Ethics when carrying out their duties and responsibilities. The solution to overcome the problem of Notary protection when carrying out their duties in the City of Semarang, especially Notary products in the form of deeds that are used as evidence as criminal cases, is to create a mechanism regarding the obligation to provide evidence by the Notary Supervisor at the regional level / Pengda of Semarang City first, so that the determination of the MPN (Notary Supervisory Board) becomes the basis for the parties to be able to file civil or criminal lawsuits. It is necessary to conduct an in-depth study related to the involvement and violation of the law for Notaries when carrying out their duties and obligations, therefore the most authorized party in conducting examinations and in-depth studies of Notary legal acts is the MPN. From the perspective of the need to create provisions for legal protection mechanisms for Notaries who are carrying out their duties and responsibilities. Making provisions regarding acts that can be subject to sanctions, and the types of sanctions that can be imposed related to the problems that are certainly faced by Notaries, which is a form of legal protection that is certain and can be used as a reference with a clear legal basis that can make the problem of implementing the duties and responsibilities of a Notary.

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Wawancara pribadi dengan Kanit Reskrim AKP Budi Setiono, SH, selaku penyidik di Polrestabes Semarang, Polda JoawaTengah, pada tanggal 24 Oktober 2024.

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