

## Notary's Responsibility for the Criminal Act of Forgery of Authentic Deeds (Study of Decision Number 1003 K/Pid/2015)

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**Abstract.** Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Position of Notary. This study aims to analyze the responsibility of notaries for the criminal act of forgery of authentic deeds with a case study in Decision Number 1003 K/Pid/2015. The main focus of this study is to understand the legal position of notaries in the context of making authentic deeds and the legal implications that arise if forgery occurs. In addition, this study also explores aspects of criminal and civil law related to the responsibility of notaries in carrying out their duties, in order to provide recommendations for legal protection for the injured parties. The research method used is a normative legal approach by examining laws and regulations and case approaches, legal doctrines, and case studies of court decisions. Data were collected through literature studies and analysis of related legal documents. The analysis was carried out descriptively qualitatively to obtain a comprehensive picture of the notary's responsibility in cases of forgery of authentic deeds. The results of the study indicate that notaries have legal responsibilities both civilly, criminally, and administratively in making authentic deeds. Decision Number 1003 K/Pid/2015 reveals that forgery of authentic deeds can result in criminal sanctions for notaries who are proven to be negligent or intentionally violating the law. From this study, it is recommended that there be strengthening of regulations and supervision of the notary profession in order to prevent abuse of authority in making authentic deeds.

**Keywords:** Deed; Forgery; Notary.

## 1. Introduction

Indonesia is a country based on law. This is stated explicitly in Article 1 paragraph (3) of the 1945 Constitution (UUD 1945). A country based on law is a country that runs its government system based on law (*rechtstaat*), not on power (*state*). The state is not omnipotent, the state cannot act arbitrarily.<sup>1</sup>Power (state) without law has no authority, while law without (support) sanctions is difficult to enforce. In this relationship, law legitimizes the state, while the state posits (creates, affirms, and enforces) and enforces the law. So, what characterizes a state of law is the relationship between the state and the law. Both are interrelated and complement each other.<sup>2</sup>

The development of education in our country has caused people to begin to realize that written evidence is an important means of proof in legal traffic. Certainty, order, and legal protection require that legal traffic in community life requires valid evidence, so that people get legal certainty over their ownership. Notaries who in their profession are actually authorized agencies in making authentic deeds. The authority of notaries in providing valid evidence is regulated in a statutory regulation at the level of a law.<sup>3</sup>

The position of a Notary as a public official is an honorable position given by the State through law to a person it trusts. Because the position of Notary cannot be placed in the executive, legislative, or judicial institutions. The existence of a notary institution is required by law with the aim of serving and assisting the community who need authentic written evidence. Article 1868 of the Civil Code states that an authentic deed is a deed made in a form determined by law and made by or before an authorized public official at the place where the deed is made.<sup>4</sup>

Knowing the importance of tasks and position Notary in the midst of society and the evidentiary power of the authentic deeds he made, it can be said that the position of Notary is a position of trust. This position of trust given by law and society requires a person who works as a Notary to be responsible for carrying out the trust as well as possible and upholding legal ethics, dignity and the nobility of

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<sup>1</sup>Krisna Harahap, 2009, *The Constitution of the Republic of Indonesia Towards the 5th Amendment*, Budi Utami Graffiti, Bandung, p. 16.

<sup>2</sup> Hilda Sophia Wiradiredja, 2015, *Criminal Liability of Notaries in Making Deeds Based on False Information in Connection with Law Number 30 of 2004 Concerning the Position of Notaries in conjunction with Law Number 2 of 2014 and the Criminal Code*, *Jurnal Wawasan Hukum*, Vol. 32, No. 1, p. 59.

<sup>3</sup>Denico Doly, 2011, *Notary's Authority in Making Deeds Relating to Land*, *JState Law Journal*, Vol. 2, No. 2, p. 270.

<sup>4</sup>Abdul Ghofur, 2009, *Indonesian Notary Institution*, UUI Press, Yogyakarta, p.13.

his position. Notaries are often involved in legal cases either as witnesses or as suspects.<sup>5</sup>

Because notaries have very important duties and authorities, notaries must not carry out acts that are prohibited by law or unlawful acts which are commonly called "onrechtmatige daad" which is something that causes losses to other people and requires the perpetrator or the guilty party to compensate for the losses incurred (Civil Code article 1365). These unlawful acts are regulated in articles 1365-1380 of the Civil Code. An explanation of the authority of a notary is found in articles 15 (1) and (2) of the Law amending the UUJN.

Mistakes in a notarial deed can result in the revocation of a person's rights or the burdening of a person with an obligation. Thus, a notary in carrying out his duties and office must always be guided by laws and regulations, codes of ethics, and morals because if a violation is committed by the notary, it will be very detrimental to the parties. If the deed he made contains legal defects due to the notary's mistake, either negligence or intentional, the notary must be held accountable morally and legally. The making of an authentic deed before a notary is not only required by laws and regulations, but also because it is desired by the interested party for the certainty of the rights and obligations of the interested party as well as for society as a whole. In carrying out his position, a Notary in carrying out his work must be in accordance with the corridor of duties and responsibilities as stated in the Notary's Job Regulations and the Notary's Code of Ethics. Notaries are required to uphold the dignity of their position, both in carrying out their position and outside of carrying out their position.<sup>6</sup>

The author here provides an example of a legal problem where a notary was involved in falsifying an authentic deed with an example case in decision Number 1003 K/PID/2015.

A notary in making a notarial deed in an authentic deed must have the requirements based on the provisions of Article 50 and Article 51 Paragraph (2) and (3) of Law Number 30 of 2004 concerning the Position of Notary.

## 2. Research Methods

This research used in this study is a qualitative type. The technique used by the author in investigating the problem is normative legal methodology.

The primary legal materials in this study use Decision number 1003 K/PID/2015, the 1945 Constitution, Law Number 2 of 2014 on the amendment to Law Number

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<sup>5</sup>Laurensius Aliman S, 2015, *Notary Book and Law Enforcement by Judges*, Deepublish, Yogyakarta, p.5.

<sup>6</sup>R. Soegondo Notodisoerjo, 1982, *Notary Law in Indonesia*, CV Rajawali, Jakarta, p. 213.

30 of 2004 concerning the Position of Notary, the notary code of ethics, the Criminal Code, and the Civil Code. Secondary legal materials used are libraries and personal library collections. Tertiary legal materials such as legal dictionaries, encyclopedias, cumulative indexes, and internet search results related to this study.

Collection legal materials are conducted by means of document studies. Document studies for study law includes the study of legal materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Each of these legal materials must be re-examined for validity and rehabilitation, because this greatly determines the results of a study.<sup>7</sup>

In this study, the data analysis process uses qualitative analysis, namely data analysis used for normative (legal) aspects through descriptive analysis method, namely describing the description of the data obtained and connecting them to each other to get clarity on a truth or vice versa, so as to obtain a new picture or strengthen an existing picture or vice versa.

### 3. Results and Discussion

#### 3.1. Notary's Responsibility for Forgery of Deeds He Makes Based on Decision Number 1003 K/Pid/2015

The position of a Notary as a functionary in society is considered as an official where someone can get reliable advice and make strong documents in a legal process. So that society needs a (*figure*) whose provisions are reliable, trustworthy, whose signature and everything (his stamp) provide a guarantee and strong evidence, an impartial expert and an advisor who is flawless, who keeps his mouth shut, and makes an agreement that can protect him in the future.<sup>8</sup>

Notary as a public official who is authorized to make deeds containing formal truths in accordance with what the parties have notified the Notary. So that the making of a Notarial deed can be used as evidence in a legal dispute which is used for: A tool to recall events that have occurred, so that it can be used for the purpose of proof.<sup>9</sup>

The authority of a notary is not yet perfect because there is no notary authority to investigate in the Notary Law, namely to investigate whether the parties making an authentic deed are parties who have good intentions and purposes or have evil intentions, so that the notary as a public official making an authentic deed is unable to investigate the material truth of the data of the person's documents

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<sup>7</sup>Amiruddin and Zainal Asikin, 2010, Introduction to Legal Research Methods, Rajawali Press, Jakarta, p. 68.

<sup>8</sup>Tan Thong Kie, 2000, Notary Study: All About Notary Practice, Ichtar Baru Van Hoeve, Jakarta, p. 162.

<sup>9</sup>R. Soegondo Notodisoerjo, *Op.cit*, p.19.

who appear is true or not. This often causes problems with authentic deeds made by notaries, because notaries are not obliged to investigate the material truth of the identities of the parties who appear before the notary, so that problems of parties falsifying their identity documents or objects that are transacted with bad intentions and purposes in making deeds often occur and drag Notaries into criminal and civil law issues.<sup>10</sup>

A Notary in carrying out his/her position in making authentic deeds related to civil matters has attributive authority, namely the authority inherent in that position and granted by law. If a notary commits a deviation from a deed he/she has made, resulting in a criminal case, then he/she must be held criminally responsible for what has been done. Criminal responsibility arises with the continuation of objective censure (*verwijbaarheid*) against an act that is declared a crime based on applicable criminal law, and subjectively to the perpetrator who meets the requirements to be subject to criminal punishment for his/her actions.<sup>11</sup>

Criminal liability in foreign languages is called “*teore kenbaarheid*”, or “criminal responsibility”, or “criminal liability”. What is meant is that criminal liability is intended to determine whether a suspect/defendant is held responsible for a crime that has occurred or not. In other words, whether the defendant will be punished or acquitted. If he is punished, it must be clear that the act committed was unlawful and the defendant is capable of being responsible. This ability shows the guilt of the perpetrator of the crime in the form of intent or negligence. This means that the act is reprehensible and the accused is aware of the act committed.<sup>12</sup>

Notaries as public officials have responsibility for authentic deeds they make, including if the deed is indicated to contain criminal elements. Although the duties of a notary are in the realm of civil and administrative law, and involve moral and ethical responsibility, notaries must still be criminally responsible for deeds that give rise to indications of criminal acts. This responsibility includes the investigation process, evidence in court, and the implementation of a judge's decision that has permanent legal force. The demand for criminal responsibility arises from the emergence of a dispute related to the deed. The elements of a criminal act are:<sup>13</sup>

#### 1. Actions by humans.

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<sup>10</sup>I Wayan Paramarta Jaya, et al., et al., 2017, Notary's Accountability Regarding the Truth of the Substance of Authentic Deeds, *Jurnal Rechtidee*, Vol. 12, No. 2, p. 269.

<sup>11</sup>2004, *Legislative Policy on the Corporate Criminal Liability System in Indonesia*, CV. Utomo, Bandung, p. 30.

<sup>12</sup>Kanter, EY and SR Sianturi, 2002, *Principles of Criminal Law in Indonesia and Their Implementation*, Stora Grafika, Jakarta, p. 250.

<sup>13</sup> Moeljatno, 1984, “*Principles of Criminal Law*”, *Second Edition*, Bina Aksara, Jakarta, p. 48.

2. Fulfilling the formulation of the law (formal requirements)
3. Unlawful (material requirements)

while the elements of error are:

1. Able to take responsibility
2. Has intent or negligence
3. There is no excuse for forgiveness

In Article 263 paragraph 1 of the Criminal Code there are two elements, namely Objective elements and Subjective elements. Objective elements consist of:

- a) Making fake letters,
- b) Forging letters,
- c) Which can issue a right, which can issue an agreement/binding, which can be used as evidence of something.

Meanwhile, the subjective element has the following meaning:

- a) To use or apply the letter as if it were genuine and not fake,
- b) The use and application of the letter may cause losses.

Article 263 paragraph 1 contains two types of prohibited acts, namely making fake letters and falsifying letters. This crime is called "Forgery of Letters".

Based on the decision in the case of Decision Number 1003 K/PID/2015, it is known that in District Court Number 906/Pid.B/ 2014/PN.Pbr the Panel of Judges assessed and justified the act but the Defendant had no specific intention or purpose, so the Panel of Judges decided to declare the Defendant the act charged to the Defendant has been proven, however the act is not a criminal act (Onslag van Recht Vervolging), so according to the Panel of Judges of the Pekanbaru District Court, notary NS did not apply the legal regulations correctly or applied the legal regulations inappropriately.

The decision of the Pekanbaru District Court, Number 906/Pid.B/2014/PN.Pbr, dated 19 March 2015, can no longer be upheld, therefore it must be cancelled and the Supreme Court will try the case itself, therefore the Public Prosecutor filed a cassation request which was then granted and the defendant, notary NS, was declared guilty of committing the crime of "FALSEING OF AUTHENTIC LETTERS" which violates Article 264 Paragraph (1) of the Criminal Code which reads:

- 1) *Forgery of documents is punishable by a maximum of eight years imprisonment if committed against:*

1. *Authentic deeds*

2. *A debt letter or debt certificate from a country or part thereof or from a public institution*

The elements of the criminal act committed by notary NS are as follows

1) That we will not respond to the Panel of Judges' considerations regarding the evidence of the Element of Whoever has been fulfilled, which also explains whether the Defendant has actually committed the act as charged, depending on the fulfillment of other elements which will be considered later;

2) That the element of Making a fake letter or falsifying a letter; That the Panel of Judges of the Pekanbaru District Court in its decision on pages 46 to 49 outlined the facts in the trial, but in our opinion, the Panel of Judges was wrong and immediately concluded that; "The changes to Articles 4, 6 and 9 have apparently been denied by witness DFPS because according to him only Article 7 was agreed to be changed, although witnesses BS and MH were supported by witness FEP, the changes were justified and occurred before all parties and witnesses signed the Deed". The Panel of Judges also considered that this element had been fulfilled on the grounds that there was a denial from one of the parties appearing, it can be concluded that the contents of the deed were not the will of one of the interested parties or were fake.

Meanwhile, Criminal Expert Prof. DR. ISMANSYAH, SH, MH, has explained that the changes made by the Defendant in an authentic deed must have the requirements based on Article 48, 49, 50 and 51 of Law Number 30 of 2004 concerning the Position of Notary, so that a copy of the notarial deed made and referring to the minutes of the deed that has been revised is not in accordance with the procedure or in an incorrect manner, then the copy of the deed is declared INVALID, based on these facts so that in our opinion, the Panel of Judges has wrongly considered the element of making a fake letter or falsifying a letter.

3) That we will not respond to the Panel of Judges' considerations regarding the proof of elements that can give rise to a right, an obligation (obligation) or debt relief, or which are intended as evidence of something.

4) That the element With the intention of using or ordering others to use the letter as if the letter was genuine and not forged, on page 50, the Panel of Judges of the Pekanbaru District Court considered namely; That based on the facts revealed in court, it is the notary's obligation to submit a copy of the Deed to the interested parties in order to be able to use the deed properly. In court it was revealed that for deed Number 149, the Defendant had submitted a copy to the second party (BS and MJ). That in our opinion the Panel of Judges was wrong and did not reveal the actual facts, because the Panel of Judges did not consider the testimony of witness DFPS who explained that a copy of Deed Number 149 never reached

witness DFPS and witness DFPS only received a printed draft or doshlag from the Defendant's employee and that Defendant NS should have submitted a copy of deed Number 149. That based on the facts in the criminal trial, when finally witness DFPS was sued, and witness DFPS asked for a copy of the agreement deed to the Defendant, but witness DFPS also could not get a copy, because the Defendant still did not give a copy of the agreement deed to witness DFPS. That after the civil trial was over, witness DFPS was able to get an official copy, even after witness DFPS had to return the doshlags to the Defendant.

5) That the element If the use can cause harm; That as we explained above, the Panel of Judges of the Pekanbaru District Court has reviewed in detail the legal facts, which in our opinion are the legal facts in the civil trial between BS and MH as Plaintiffs and DFPS as Defendant, where from page 51, the Panel of Judges describes the contents of the cooperation agreement regarding the rights of the first party, namely witness DFPS and the second party BS and MH, but the Panel of Judges did not consider the testimony of witness DFPS in the criminal trial of Defendant NS, which in essence explained that witnesses BS and MH had withdrawn from the cooperation agreement when witnesses BS and MH withdrew a guarantee of Rp5,000,000,000.00 (five billion rupiah) and witness DFPS to maintain the credibility and good name of PT. BI in the future at PT. CPI then replaced the guarantee fund of IDR 5,000,000,000.00 (five billion rupiah) and continued the work, so that witnesses BS and MH should not have sued witness DFPS based on Deed Number 150.

In the Decision of Case Number 1003K/Pid/2015, it was found that the Panel of Judges at the District Court did not consider the following expert statements:

1. According to Criminal Expert Prof. DR. ISMANSYAH, SH, MH, explained that the changes made by the Defendant in an authentic Deed must have the requirements based on the provisions of Law Number 30 of 2004 Article 50 and Article 51 Paragraph (2) and (3) concerning the Notary Position. So that the Defendant's actions in changing the Minutes of Deed Number 149 which is an Authentic Deed without going through the provisions of the Law or guidelines for changing Authentic Deeds is something that is not right if it is done then the Authentic Deed becomes invalid or can no longer be used as an Authentic Deed that has binding force and this is where the requirements for forging an Authentic Deed are met where the principles for proving forgery of a letter, namely material forgery and intellectual forgery have been met and changes can cause losses.

2. Based on the statement of Notary Expert Dr. Syahril Syofyan, SHMKn, that if the parties have not agreed with the words or sentences contained in the minutes, the notary in this case the Defendant is obliged to make corrections or renvoi to the minutes of the Deed until the draft of the minutes is deemed perfect and signed by the parties, witnesses and Notary, where the changes must be made as follows:



1) The notary must renvoi (appoint) the incomplete clauses according to the parties and the incomplete clauses must be crossed out in an orderly manner and still be readable, then a correct clause must be made on the left side of the blank minutes of the Deed and after being written/replaced, it must be initialed by the parties, witnesses and the notary.

2) If the change is made after signing, the change is considered invalid. If the crossed out clause is then replaced simply by the deletion method, overlapping typing, the change is invalid and against notary law as regulated in Article 49 of Law No. 30 of 2004 concerning Notary.

3) If the changes are not known to the parties or one of the parties is then made into a copy of the Deed, then the Deed contains elements of forgery in accordance with Article 263 of the Criminal Code.

4) A notary has the authority to correct any writing errors or typographical errors in the minutes of a deed that have been signed by the parties and the correction is carried out by making a report and providing a note about this in the original minutes of the deed by stating the date and number of the deed, the minutes of the correction and the minutes of the correction must be submitted to the parties.

That the changes made by the Defendant in Articles 4, 6, 7 and 9 of the minutes of Deed No. 149 are not in accordance with the rules stipulated in Law No. 30 of 2004 in Articles 48, 49, 50 and 51 so that the copy of the notarial Deed made and referring to the minutes of the Deed that has been revised is not in accordance with the procedure or in an incorrect manner, then the copy of the Deed is declared INVALID.

Because the defendant notary NS made changes that the defendant made cannot be justified because it was based on the request of the DFPS witness, which the defendant responded to by adding changes by changing other articles, namely Articles 4, 6 and 9 on the defendant's own initiative on the grounds of adjusting the changes to Article 7, even though the changes were not legally justified because the changes to Articles 4, 6 and 9 were not implemented in front of the parties so that it is possible that the changes to Articles 4, 6 and 9 will change the meaning of the contents of the agreement with the DFPS witness not knowing the changes and denying the contents of the copy of the cooperation agreement Number 149, because the contents are very different in meaning from the contents of the draft cooperation agreement/doslag received by DFPS.

For this reason, the defendant notary NS must be responsible for his mistakes in accordance with the decision, and in this regard the panel of judges:

➤ Declaring that the Defendant NS, mentioned above, has been proven legally and convincingly guilty of committing the crime of "FALSEING OF AUTHENTIC LETTERS".

- Sentencing the Defendant to 1 (one) year in prison.
- Ordering that the Defendant be detained.
- Determine the evidence in the form of:
  - a) 1 (one) Exemplar Photocopy of minutes of Deed No. 149, Cooperation Agreement in the procurement of driverless cars at PT. Chevron Pacific Indonesia between PT. BI (DFPS with Mr. BS and Mr. MH, which was made and signed on March 30, 2011 which has been legalized in accordance with the original.
  - b) 1 (one) bundle of original copies of Deed No. 149 made by Notary NS, dated 30 March 2011.
  - c) 1 (one) bundle of original copies of Deed No. 150 made by Notary NS, dated March 30, 2011.

Returned to the Defendant.

- 2 (two) printouts of Bank Mandiri Ahmad Yani Branch regarding the details of installment payments for Mitsubishi Pajero Sport cars BM 1224 JH, BM 1225 JH, and BM 1226 JH.
- 1 (one) bundle of proof of payment for 1 (one) unit of Toyota Fortuner BM 1481 JH with Engine Number 2TR7066747 V/AT Year 2011.
- 1 (one) bundle of original copies of Deed No. 149 made by Notary NS, dated 30 March 2011.
- 1 (one) bundle of original Riau Province PMD decisions.
- 1 (one) bundle of original copies of Deed No. 150 made by Notary NS, dated March 30, 2011.

Returned to DFPS.

Charge the Respondent in the Cassation/Defendant with paying court costs at all levels of the trial and at the cassation level this is set at Rp. 2,500.00 (two thousand five hundred rupiah);

According to Hans Kelsen's theory in his theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the case of a conflicting act. So, adopting Hans Kelsen's theory of responsibility, notary NS must be responsible for the act he has committed which causes harm to another party. And notary NS violates Article 264 paragraph (1) of the Criminal Code. However, because there is a judge's consideration that the defendant has never been convicted and the defendant regrets his actions, here the defendant is sentenced to 1 year in prison and is asked to submit documents and pay court costs.

### **3.2. Legal Implications of Forgery of Authentic Deeds Made by Notaries Based on Decision Number 1003 K/Pid/2015**

The making of certain authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. The making of such deeds is not only because it is required by laws and regulations, but also because it is desired by the interested parties to ensure the rights and obligations of the interested parties for the sake of certainty, order and legal protection for the interested parties as well as for society as a whole. The goal to be achieved from the existence of a notary institution is to guarantee certainty, order and legal protection for society in the legal traffic of community life.

According to Gustav Radbruch, legal certainty is a product of law or more specifically of legislation. Based on his opinion, positive law that regulates human interests in society must always be obeyed even though the positive law is felt to be unfair. However, in essence, legal certainty is the main objective of law. The order of society is also closely related to certainty in law, because order is the core of certainty itself.<sup>14</sup>

However, it is different if the defendant, notary NS, makes changes to article 4, article 6 and article 9 in the minutes of deed no. 149 of the agreement of both parties. So in this case, it is appropriate for the court to enforce the law by declaring notary NS guilty of falsifying an authentic deed and sentenced to 1 year in prison, with that, order in society and legal certainty will run properly.

The legal implications violated by the NS notary according to the author's analysis are as follows:

#### **1. Implications in criminal law**

The Notary Law does not mention the application of criminal sanctions, but if a legal action against a violation committed by a Notary contains elements of deliberate forgery/negligence in making an authentic letter/deed whose contents are false, then after being subject to administrative sanctions/code of ethics for the notary profession and civil sanctions, it can then be withdrawn and qualified as a criminal act committed by a Notary which explains the existence of evidence of deliberate involvement in committing the crime of forgery of an authentic deed.<sup>15</sup>

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<sup>14</sup> Budi Astuti and M. Rusdi Daud, 2023, Legal Certainty of Online Transportation Regulations, *Al-Qisth Law Review Journal*, vol. 6 No. 2, p. 219.

<sup>15</sup> Habib Adjie, 2008, *Notary Law in Indonesia: Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notary*, Bandung: Refika Aditama, p. 25

On March 30, 2011, NotariNS falsified the contents of Deed No. 149 in the cooperation agreement between PT. BI and other parties related to the tender for the procurement of vehicles for PT. CPI.

After the draft agreement was submitted to the parties, witness DFPS (Director of PT. BI) found an error in Article 7 regarding the recipient of the fee and requested a correction, which was then approved by the other party. However, without the witness' knowledge, Notary NS also changed the contents of Articles 4, 6, and 9 by replacing the term "First Party" with "Second Party" using an eraser and a manual typewriter.

This change has a serious impact, because when PT. BI won the tender, other parties (BS and MH) knew the Director of PT. BI. In addition, they withdrew a tender guarantee worth Rp 5 billion, causing PT. BI to have to re-deposit the funds to survive.

This case ended in a civil dispute, where in the trial there was a difference between the original minutes of the deed and the copy of the deed submitted by the opposing party. After witness DFPS checked the original minutes of the deed at the Notary's office, he found that there were scribbles, deletions, and changes to the contents that were made without approval. As a result, PT. BI lost the civil case, was required to pay compensation of Rp1.3 billion, and lost 4 units of cars that were confiscated as collateral and witness DFPS as Director of PT. BI had to pay installments for the 4 (four) vehicles every month.

Based on the decision of Decision Study Number 1003 K/Pid/2015, the defendant notary NS committed a violation of Article 264 Paragraph (1) of the Criminal Code which reads:

*1) Forgery of documents is punishable by a maximum of eight years imprisonment if committed against:*

*1. Authentic deeds*

*2. A debt letter or debt certificate from a country or part thereof or from a public institution*

In the case listed in the decision No. 1003 K/PID/2015, the Defendant, a Notary, was proven to have falsified Deed No. 149 by changing the contents of the minutes of the deed without following the official procedures stipulated in the Notary Law. This act resulted in the deed being considered invalid and caused losses to the related parties.

The criminal law implications in the case carried out by notary NS in the form of falsification of deeds here violate Article 264 paragraph (1) of the Criminal Code.

## 2. Implications in civil law

In decision No. 1003 K/PID/2015 according to one of the principles of responsibility put forward by Hans Kelsen, namely the principle of responsibility is based on the element of error. This means that someone can be held accountable if there is an element of error that has been done. The authority to make this authentic deed is a request from the parties, as long as it does not conflict with Article 1320 of the Civil Code, namely that for the validity of the agreement 4 conditions are required, namely:

- a) Agreement of the parties
- b) Ability to make a contract
- c) A particular object/thing
- d) A lawful cause.

Based on this authority, in carrying out his duties and obligations, a notary must be required to provide legal certainty and professional services to the parties. Regarding civil liability, the liability provisions regulated in civil law are applied, namely the provisions of Article 1365 of the Civil Code.

In Article 1365 of the Civil Code there are four important elements for a person to be responsible, namely:

1. There is an unlawful act;
2. There must be an element of error;
3. There is a loss suffered as a result of his actions;
4. There is a causal relationship between the error and the loss suffered.

The provisions of Article 1365 of the Civil Code above regulate liability arising from an unlawful act, either due to committing (*fault of commitment*) or because of not doing (*guilty of wrongdoing*).<sup>16</sup>

The civil law implications in this case that occurred to the deed that had been forged by the defendant, notary NS, must be held accountable because it has fulfilled the elements stated in Article 1365 of the Civil Code, here the defendant notary NS made a mistake in making the deed which resulted in a loss, as a result of the mistake someone suffered a loss for that reason notary NS must be responsible in accordance with that regulated in Article 1366 of the Civil Code. This principle is used in the Notary profession, where if the notary in the process of

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<sup>16</sup>I Wayan Paramarta Jaya, et al., *Op.cit*, p. 277.

making the deed makes a mistake that results in a loss and its truth can be proven, then Notary NS must be responsible for the mistake he has made.

A forged deed becomes invalid under the law. As a result, the deed cannot be used as authentic evidence in a civil trial. In this case, the forgery of the deed caused PT BI to lose the civil lawsuit and was required to pay compensation of Rp1,300,000,000.00 and lost company assets.

In this case, the defendant notary NS is also required to make compensation in accordance with the provisions of Article 84 UUJN because notary NS violated Article 48 UUJN. The contents of Article 84 UUJN:

*"A violation committed by a Notary against the provisions as intended in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed only having evidentiary force as a private deed or a deed becoming null and void by law can be a reason for the party who suffers losses to demand reimbursement of costs, compensation and interest from Notary Public."*

Based on the case above, the author's analysis of the case that ensnared notary NS meets the elements of a violation in Article 1365 of the Civil Code and meets the provisions of Article 84 of the UUJN because notary NS violated the provisions of Article 48 of the UUJN. And in this case, the deed made by notary NS is null and void because an agreement that does not meet objective requirements, namely the object is not certain and the cause is prohibited, then the agreement is null and void. Because Article 1335 of the BW emphasizes that an agreement without a cause or that has been made for a false or prohibited reason, then the agreement has no force.<sup>17</sup>

### **3. Administrative implications**

The actions of Notary NS in the case of decision Number 1003 K/Pid/2015 violated Article 48 paragraph (1) of the Notary Law which states that the contents of a deed may not be changed, added to or reduced after signing because in this case the defendant Notary NS made changes to Article 4, Article 6 and Article 9 of deed no. 149 without the approval of both parties.

The defendant, notary NS, also violated Article 16 paragraph (1) letter a of the UUJN, which states that notaries must act in a trustworthy, honest, fair, independent, impartial manner and protect the interests of the parties involved in legal acts.

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<sup>17</sup>Habib Adjie, 2017, Civil and Administrative Sanctions Against Notaries as Public Officials, PT Refika Aditama, Bandung, p.97.

The actions taken by the defendant notary NS in falsifying deed no. 149 can be subject to administrative sanctions by the Notary Honorary Council, namely temporary suspension because in this case the defendant notary NS was detained for one (1) year in prison in accordance with decision number 1003 K/Pid/2015 so that it is in accordance with the provisions of Article 9 of the UUJN which reads:

*Notary Public* temporarily dismissed from his position because:

- a. in the process of bankruptcy or suspension of debt payment obligations;*
- b. under guardianship;*
- c. committing a despicable act;*
- d. committing a violation of the obligations and prohibitions of the position and the code of ethics of a Notary; or*
- e. currently serving a period of detention*

And the sanctions are also emphasized in Article 85 of Law Number 30 of 2004 concerning the position of notary which contains:

*"Violations of the provisions as referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63, may be subject to sanctions in the form of:*

- a. verbal warning;*
- b. written warning;*
- c. temporary suspension;*
- d. honorable discharge; or*
- e. dishonorable discharge."*

In this case, the defendant notary NS also violated the notary code of ethics in Article 3 paragraphs (1), (2), (3) and (4) which read:

*Notary and other people (while the person concerned is carrying out the position of Notary) are required to:*

- 1. Have good morals, ethics and personality;*
- 2. Respect and uphold the dignity and honor of the Notary Office;*

3. *Maintain and defend the honor of the Association;*
4. *Behave honestly, independently, impartially, trustworthy, carefully, with a full sense of responsibility, based on laws and regulations and the contents of the Notary's oath of office;*

Based on this case, the defendant notary NS was also subject to sanctions in accordance with Article 6 paragraph (1) of the notary code of ethics:

1. *Sanctions imposed on members who violate the Code of Ethics may include:*
  - a. *Reprimand;*
  - b. *Warning;*
  - c. *Temporary suspension from membership of the Association;*
  - d. *Honorable dismissal from membership of the Association;*
  - e. *Dishonorable dismissal from membership of the Association.*

Sanctions in the Notary Code of Ethics are similar in nature to administrative sanctions as previously explained. A notary may be subject to code of ethics sanctions if they violate the obligations and prohibitions stipulated in the Notary Code of Ethics. These sanctions are closely related to administrative sanctions stipulated in the UUJN.

Based on the case above, the author's analysis shows that the defendant Notary NS violated Article 48 paragraph (1) UUJN, Article 16 paragraph (1) letter a UUJN, violated Article 3 of the notary code of ethics, the sanctions for which are stated in Article 85 of Law Number 30 of 2004 concerning the position of notary and the sanction of temporary dismissal in accordance with Article 6 paragraph (1) of the notary code of ethics which refers to Article 9 paragraph (1) letter d UUJN which expressly states that a notary can be temporarily dismissed from his position if he is proven to have violated obligations, position prohibitions, or the notary code of ethics.

#### **4. Conclusion**

Notaries have an important role in ensuring legal certainty by issuing authentic, valid deeds. However, in this case, Notary NS., was proven to have falsified the contents of Deed No. 149 by changing several articles without proper procedures. This violates the principles of notarial law and the provisions of the Notary Law (UUJN). In this case, Notary NS was proven guilty based on Supreme Court Decision Number 1003 K/PID/2015 for violating Article 264 Paragraph (1) of the Criminal Code concerning falsification of authentic deeds, with a criminal penalty of up to eight years. The defendant must be responsible for his actions by being sentenced to one year in prison and being charged court costs. As a result of this action, there



was a difference in the contents between the original minutes of the deed and the copy of the deed, which resulted in PT. BI's defeat in the civil dispute and caused significant financial losses. His actions had a wide impact on various legal aspects.

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