

## LEGAL PROTECTION AGAINST NOTARIES IN THE MAKING OF DEEDS

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### ABSTRACT

*Notary is a public official authorized to make an authentic deed related to all agreements, actions, and provisions that are required in laws and regulations and/or expected for interested parties to be stated in an authentic deed, in order to carry out the daily occupation of a notary it turns out that it is not enough for notary to be only limited to mastering or understanding the science of law (notary) which is the scope of that knowledge, but still has to be careful and have to know a lot or find out the experiences of notaries who have been in trouble (law) as a result of carrying out their duties as a Notary, the responsibility that exists within the notary is a subjective reason alone, so that responsibility is absolute (strict), and the protection of the notary who makes the deeds. This research is normative, namely research conducted by examining library materials or secondary materials. This study also uses data collection methods in the form of literature studies, by reading and studying primary legal materials, namely laws and regulations, and secondary legal materials, namely from several literatures, books, and other documents in order to examine the problems in this research. The results of the research that the author examines that the responsibility of a notary in making a deed based on a false or falsified identity are based on fault of liability, or mistakes made by the notary himself, that responsibility can be in terms of criminal or civil, the protection of the notary is the formation of the Supervisory Council, and the establishment of the Honorary Notaries Council that regulates law enforcement does not immediately carry out summons to notaries, especially those related to notarial deeds or protocols that are in the notary's storage.*

Keywords: Deeds, Notary, Legal Liability.

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### INTRODUCTION

Notary institutions born in Indonesia are the will of the State, or the occupation of a notary is an institution established by the State to accomplish part of the State's authority in the field of civil law, by making written evidence recognized by the State, therefore the position of a notary is allowed to use the symbol of the State in the field of civil law in carrying out their duties in accordance with the law. The state must also be responsible, namely by providing legal protection to Notaries who are willing to accept and carry out some of the State's authority.

Notariat institutions were established in Indonesia since 1860, as a result of which notariat institutions are not new institutions among the People of Indonesia. The meaning of the word notary comes from the word notaries, is the name when in Roman times, given to people who work as writers.

Notary position is a position whose presence is desired by the State as to realize legal protection and legal starch in the realm of interaction in the field of criminal and civil administration. The importance of legal protection and legal certainty in the real life of the state and society. A private or public interaction relationship must reflect the values of legal protection, justice and legal certainty.

In carrying out the daily duties of a notary, it turns out that it is not enough for a notary to be only limited to mastering or understanding the science of law (notary) which is the scope of this knowledge, but he still has to be careful and must know a lot or find out the experiences of notaries who have been exposed to problems (legal) as a result of carrying out his duties as a notary.

Notary is a public official who is authorized to make an authentic deed related to all agreements, acts, and provisions required in laws and regulations and/or expected for those with an interest to be stated in an authentic deed, guarantees the certainty of the date of deed making, provides grosse, keeps, copies and quotations of the deed, all of which during the making of the deeds are also assigned or excluded to other officials or other people stipulated by law.

Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of a Notary, that the definition of a Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or under other laws.

Article 1 paragraph (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and Notary Deed, hereinafter referred to as a Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law. The Notary Deed itself arises because of the direct involvement of the parties who appear before the Notary in the process of making the deed so that an authentic deed is born.

Authentic deeds are perfect evidence that have an important role in legal activities and legal relationships that occur in people's daily lives, for example in the banking sector, land sector, social activities and other activities that require written evidence in the form of an authentic deed. The importance of this written agreement being made before a notary is for legal guarantees and to fulfill a strong and legal proof of law for the parties to the agreement, in this case, especially in the field of credit agreements at banks. The existence of written evidence in the form of an authentic deed can clearly identify the rights and obligations of a person and guarantee legal certainty.

The reality that occurs in society is that a Notary when making a deed does not check the identity of the appearers as evidence in making the deed, even though basically in making a credit agreement related to the identity data of the appearers, a review has been carried out from the Bank. In this case, a Notary must be responsible for the behavior carried out by the customer or debtor if it turns out that the customer or debtor attaches a false or falsified identity.

Based on the preliminary description related to the problems above, a notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary according to the form and procedure stipulated in the law. To study further about the responsibility of the notary to the deed made, the writer then formulates the problem as follows: (1) what is the notary's responsibility for the deed made? (2) What is the legal protection for the notary against the deed made?

## METHOD

The method used in this research is normative, namely research conducted by examining library materials or secondary materials. This study also uses data collection methods in the form of literature studies, by reading and studying primary legal materials, namely legislation and secondary legal materials, namely from several literatures, books, and other documents in order to examine the problems in this research.

## DISCUSSION

### 1. Legal Protection for Notaries Against Deeds Made

To ensure the certainty, order and protection of the law, authentic written evidence is needed regarding the circumstances, events and legal actions carried out through certain positions, which carry out the profession in the servant of law to the community, in order to obtain protection and guarantees for the realization of legal certainty.

Notaries in carrying out their positions also need to be given legal protection, including:

- a) To maintain the dignity and dignity of his position, also when giving testimony and proceeding in examinations and trials
- b) To conceal the deed of evidence obtained, for the making of the deed
- c) Keep the minutes or letters affixed to the minutes of the deed or protocol of the notary in the notary's storage.

Legal protection is every government efforts to ensure legal certainty to provide protection for citizens so that their rights as citizens are not violated, and those who violate can be subjected to sanctions in accordance with applicable regulations.

Legal protection for Notaries as regulated in Article 66 of Law No 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary. In Article 66 Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions also regulates the establishment of the Notary Honorary Council (MKN) consisting of representatives of Notaries, the government and academics, which aims to be a legal protection institution for the Notary Position related to the deed made by or before him.

Legal protection for Notaries in criminal proceedings according to UUJN has the following forms:

- 1) Provisions governing the liability of default and the right of default of Notaries listed in Article 4 paragraph (2), Article 16 paragraph (1) letter f and Article 54
- 2) Stick a fingerprint on the minutes of the deed. As regulated in Article 16 paragraph (1) letter c
- 3) Approval of the Notary Honorary Council, as regulated in Article 66 paragraph (1) of the Amendment UUJN which states that in the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council
- 4) Protection of notaries as members of the Indonesian Notary Association, is regulated in Article 82 paragraph (2) of the UUJN
- 5) Supervision of the practice of the notary profession, regulated in Article 67 paragraph (5) of the UUJN

Based on the Notary Law as a public official in carrying out his duty in the field of legal services for citizens, which has been listed in the Notary Position Act, Notaries are entitled to legal protection and guarantees for the realization of legal certainty. In order to provide legal certainty/guarantee, everyone has the right and obligation or legal protection for their interests so that the parties concerned can feel safe.

A Notary who violates the rules in carrying out his duties as a public official, while the Law does not order him to do, then based on the Law on Notary Positions, action can be taken against the Notary. Based on the principle of guaranteeing and providing a sense of legal certainty to the community, it is necessary to provide legal protection in the form of prevention where the Notary provides the necessary information to provide a sense of security both physically and mentally. Notary is also given the chance to propose his opinion or sanction from threats, terror and violence from any party.

Notaries as public officials work to serve the interests of the community, namely in the field of service for making deeds and other tasks assigned to Notaries, based on the principle of guaranteeing and providing a sense of legal certainty to the community. The law provides for this task, so that a Notary who has the authority to make an authentic deed protected by law. The existence of legal protection for Notaries which aims to ensure that their rights and authorities as well as Notary obligations when carrying out their duties are as based on the Law on Notary Positions and the Notary Code of Ethics that have been carried out according to applicable regulations, whether based on law or based on professional and moral ethics, for the sake of the realization of legal protection and legal certainty for the Notary profession and the public interest.

Legal protection for Notaries is normatively based on the applicable laws and regulations, therefore as follows:

- a. The formation of the Supervisory Council as stated in Article 67 paragraph (3) of the UUJN is formed by the minister consisting of 3 (three) elements, namely 3 (three) persons according to the Government, 3 (three) persons from Notary organizations, 3 (three) persons from academics. The supervision covers the implementation of the notary position.
- b. In the Extraordinary Congress situated in Banten, on May 28, 2015 which stated that the Honorary Council is a tool for associations as a body or institution that is independent and free from partiality to the association whose duties are to:

- a) Supervising, developing, guiding and enforcing members while upholding the code of ethics;
  - b) Examining and making decisions on alleged violations of the notary code of ethics;
  - c) Providing opinions and suggestions to the Supervisory Council and/or the Notary Honorary Council on alleged violations of the notary code of ethics and the position of a notary.
- c. Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council which regulates law enforcement does not necessarily carry out summons to Notaries, especially those related to notary deed or protocols that are in the notary's custody.

## 2. The Notary's Responsibility for the Deed Made

Notary has responsibility by having the principle of responsibility based on fault (based on fault of liability), in making an authentic deed, the Notary is obliged to be responsible if the deed he made has an error or intentional violation by the Notary. On the other hand, if parts of the errors or violations arise from the party of appearers, then the Notary exercises his authority based on the laws and regulations.

The Notary's responsibilities are born because of the obligations and authorities given to the Notary, these obligations and authorities come into effect legally and are bound when the Notary takes his oath of office. According to Raden Soegondo Notodisoerjo, what can be accounted for by a Notary is if it is a fraud or deception originating from the Notary himself. Meanwhile, according to Nico, the Notary's responsibilities are divided into 4 parts:

- a) The civil liability of the notary to the material truth of the deed he made
- b) The notary's criminal responsibility for the material truth in the deed he made
- c) The notary's responsibility based on the Notary Position Regulations on the material truth in the deed he made
- d) The notary's responsibility in carrying out his/her duties is based on the Notary Code of Ethics.

In this study, the authors want to examine the responsibility of the notary to the deed made based on the terms of criminal and civil law, which are as follows:

- 1) The notary's responsibility for the deed made from a criminal perspective

The notary's responsibility for the deed he made in terms of criminal law is not regulated in the law Law Number 2 of 2014 on amendments to Law Number 30 of 2004 concerning the Position of a Notary, however, the responsibility of a Notary in a criminal manner can be imposed if the Notary commits a criminal act. The Notary cannot be held responsible because he only records what was submitted by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties themselves. However, the Notary can be held responsible if he commits fraud or deception committed by the Notary himself.

Criminal law has the principle of *Green Straf Zonder Schuld*, therefore, there is no crime without guilt. Errors are always directed at inappropriate actions, namely doing something that should not be done or not doing something that should be done. A person cannot be convicted if he does not commit an act where the act committed is prohibited by law in accordance with the principle of legality. The criminal law regulates various kinds of errors which consist of:

1. Intentionality

Criminal acts have an element of intent (*opzet*), not an element of error (*culpa*). In this case, the person who deserves the criminal punishment is someone who does something intentionally.

2. Dereliction

Dereliction or the act of negligence is one type of error that arises because the perpetrator has not met the standard of action that has been applied in the law. The negligence arises due to the behavior of the person.

However, the Notary may make a mistake in making the deed, the error can occur, among others:

- a. Error when typing on a Notary copy, in that case, this error can be corrected by making a new copy similar to the original and the original copy having the same strength as the original deed;
- b. Error in the form of a Notary deed, in that case, the record of meeting should be made but by the Notary it is made into a statement of the meeting decision;
- c. Errors in the contents of the notary deed, in this case related to information from parties who have appeared before the notary, which at the time of making the deed was declared correct but later turned out to be incorrect.

If there is a notarial deed in question for the parties, to resolve it must be based on the cancellation of the notary deed as perfect evidence. The error that arises in the notarial deed will be examined by the judge when the notarial deed has been submitted to the court for evidence.

The Notary Position Act does not regulate criminal provisions, but a Notary can be held criminally responsible if he commits a criminal act. Moeljatno stated that a criminal act is anyone who violates the prohibition regulated in criminal law is prohibited and is threatened with a criminal punishment. The problem that the author examines in this paper is related to the falsification of the identity of the appearer when facing a notary.

- 2) Responsibilities of a Notary in Civil Law

Article 1 number 7 of the Law on Notary Positions states that a notary deed is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. This article is an affirmation of article 1868 of the Civil Code which states "an authentic deed is a deed made in the form determined by law by or before a public official authorized to do so at the place where the deed was made".

Article 65 of the Law on Notary Positions does not clearly explain the time limit for the notary's responsibility for the deed. Because the author uses the ideal time limit, the notary's responsibility for his deed from Agri Fermentia Nugraha is up to a lifetime. If the Notary makes a personal mistake in making an authentic deed that is not in accordance with the provisions stipulated in the Notary Position Act, causing a loss to one of the parties for the making of the deed, the Notary can be sued in court to pay compensation costs and interest. Claims for compensation and interest can be submitted by the appearers who feel aggrieved to the court by using the provisions of Article 1365 of the Civil Code which states that:

"Every unlawful act that causes harm to another person obliges that person because of his mistake to issue the loss to compensate for the loss"

The provisions of Article 1365 of the Civil Code above regulate the liability incurred due to an act against the law either because of doing or not doing.

Meanwhile, in the provisions of Article 1366 of the Civil Code, it is more directed to demands for liability caused by errors due to negligence. Unlawful acts are defined as "acting or not violating the rights of others, or contrary to the legal obligations of the person who did the act itself or contrary to decency or due caution in public traffic, against the self or property of others.

## CONCLUSION

1. Legal protection for Notaries as regulated in Article 66 of Law No 2 of 2014 concerning the amendments to Law Number 30 of 2004 concerning the Position of a Notary. The existence of legal protection for Notaries which aims to ensure that their rights and authorities as well as Notary obligations when carrying out their duties are as based on the Law on Notary Positions and the Notary Code of Ethics that have been carried out according to applicable regulations, whether based on law or based on professional and moral ethics, for the sake of the realization of legal protection and legal certainty for the Notary profession and the public interest.
2. The notary's responsibility for the deed he made in terms of criminal law is not regulated in the Law Number 2 of 2014 on amendments to Law Number 30 of 2004 concerning the Position of a Notary; however, the responsibility of a Notary in a criminal manner can be imposed if the Notary commits a criminal act. The form of responsibility carried out by a Notary is in accordance with the mistakes he made. If the Notary violates the rules of criminal law such as forgery or so on, the Notary is obliged to carry out criminal liability in the form of corporal punishment or fines. And if the Notary violates the civil rules, the Notary is subject to compensation and for the deed he made, the power of proof falls under the hands.

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