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Notary Criminal Liability against Authentic Deals Indicated to Criminal Actions (Case Study of Field High Court Decision Number: 82/PID/2010/PTMDN)

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ABSTRACT

The Law on Notary Positions does not at all contain the concept of notary criminal responsibility. Whereas in practice in the field it is often found that a legal action or violation committed by a notary related to the authentic deed he made is qualified as a criminal act. criminalizing a notary by applying the articles of the Criminal Code without being preceded by an in-depth study of the concept of criminal liability of a notary is an act that cannot be justified scientifically and juridically. Therefore, efforts to formulate the concept of criminal liability of a notary is an important step that must be taken to avoid the symptoms of arbitrary criminalization of a notary as a public official.

ABSTRAK

Undang-Undang Jabatan Notaris sama sekali tidak memuat konsepsi tentang pertanggungjawaban pidana notaris. Padahal dalam praktik di lapangan seringkali ditemukan kenyataan bahwa suatu tindakan hukum atau pelanggaran yang dilakukan notaris terkait akta otentik yang dibuatnya dikualifikasikan sebagai suatu tindak pidana. memidanakan notaris dengan menerapkan pasal-pasal KUHP tanpa didahului oleh kajian yang mendalam tentang konsepsi pertanggungjawaban pidana notaris merupakan tindakan yang tidak dapat dipertanggungjawabkan secara ilmiah dan yuridis. Oleh karena itu, upaya untuk merumuskan konsep pertanggungjawaban pidana notaris merupakan langkah penting yang harus dilakukan untuk menghindari gejala kriminalisasi yang sewenang-wenang terhadap notaris sebagai penjabat umum.

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I. INTRODUCTION

The criminal responsibility of a notary in his position as a public official in the Indonesian justice system has not been specifically formulated. Although a notary as a citizen of the Republic of Indonesia has the same position before the law (equality before the law), in carrying out his duties he has special privileges as a General Officer appointed by the state as well as representing the authority of the state. Therefore, the process of punishing a notary is not a simple matter, there are many aspects that must be considered so as not to sacrifice legal protection for a notary who carries out his duties and authorities both as a public official and as a profession. If these aspects are not

considered, then the punishment of a notary tends to lead to ad hoc criminalization of the notary profession.

The Law on Notary Positions (UUJN) basically stipulates guidelines on the responsibility of a notary as a public official and the forms of sanctions that can be imposed on a notary if a notary commits violations that have been determined by UUJN. The said accountability includes accountability in administrative, civil and code of ethics aspects. The UUJN stipulates that when a notary in carrying out his duties and positions is proven to have committed a violation, the notary can be subject to sanctions in the form of administrative, civil and code of ethics sanctions. These sanctions have been regulated in such a way both in the UUJN and the Code of Ethics for Notary Positions.

However, UUJN does not explicitly regulate criminal sanctions against Notaries. In other words, the UUJN does not at all contain the concept of a notary's criminal responsibility. Whereas in practice in the field it is often found that a legal action or violation committed by a notary related to the authentic deed he made is qualified as a criminal act. In this context, investigators, public prosecutors and judges generally apply articles in the Criminal Code to drag a notary into a criminal case. The application of the articles of the Criminal Code occurs because the UUJN does not contain provisions on criminal sanctions against a notary in his position as a public official. According to the author, criminalizing a notary by applying the articles of the Criminal Code without being preceded by an in-depth study of the concept of criminal liability of a notary is an act that cannot be justified scientifically and juridically. Therefore, efforts to formulate the concept of criminal liability of a notary is an important step that must be taken to avoid the symptoms of arbitrary criminalization of a notary as a public official.

II. RESEARCH METHODS

1. Types and Nature of Research

This type of research is normative legal research or dogmatic law research. This normative legal research includes research on legal principles, research on legal systematics, research on vertical and horizontal synchronization stages, legal comparisons and legal history.

2. Source of Legal Material

Data derived from primary legal materials, secondary legal materials, and tertiary legal materials will then be processed by systematizing the legal materials in question, then a classification is made of notary legal actions that can be classified as criminal acts. The processed data will be interpreted by means of legal interpretation and legal construction that is common in legal science, then analyzed qualitatively in a normative juridical presentation. It is called normative juridical analysis because this research is doctrinal legal research which is also called library research or document study which is carried out or aimed only at written regulations or other legal materials. The analysis includes an analysis of legal principles, legal rules, legal reasoning and legal sources contained in a statutory regulation or court decision.

III. RESULTS AND DISCUSSION

1. Obligations of a Notary in Checking the Correctness of the Documents of the Appraisers before Making the Deed

The position held by a Notary is a position of trust mandated by law and society, for that a Notary is responsible for carrying out the trust given to him by always upholding legal ethics and the dignity and nobility of his position, because if this is ignored by a Notary then will be harmful to the general public it serves. In carrying out his position, a Notary must comply with all moral principles

that have lived and developed in the community. Apart from the responsibilities of professional ethics, integrity and good morals are important requirements that must be possessed by a Notary.

Notaries in carrying out their duties and obligations provide services to the community to make evidence in the form of a deed, where the Notary in the applicable laws and regulations states that he must not take sides with one party and must be fair to both parties. Notaries are obliged to provide legal information to both parties who want to make an agreement, regarding the documents needed to the legal consequences of the agreement they will make and agree on. So that as a public official appointed by the state to make evidence in the form of a deed, he does not carry out legal actions carried out by both parties, but only helps develop what the parties want for their evidence. But sometimes this is not understood by other law enforcers so that many Notaries are considered to have committed a legal act where there is criminal legal responsibility that must be borne by him.
Notary deed can be categorized as a letter, the burden of proof is the same as a letter. But in the deed there must be 3 (three) underlying aspects, namely outwardly, formally and materially. The three aspects of the authentic deed are interrelated and constitute the perfection of an authentic deed.

The power of external evidence is the ability of the deed itself to prove its validity as an authentic deed. If it is seen from the outside (its birth) as an authentic deed and in accordance with the legal rules that have been determined regarding the terms of an authentic deed, then the deed is valid as an authentic deed, until proven otherwise, meaning until someone proves that the deed is not an outwardly authentic deed. In this case, the burden of proof is on the party who denies the authenticity of the notary deed. Parameters to determine the Notary deed as an authentic deed, namely the signature of the Notary concerned, both in the minutes and copies as well as the beginning of the deed (starting from the title) to the end of the deed. Denial or denial that outwardly the Notary deed is an authentic deed, not an authentic deed, then the assessment of the evidence must be based on the requirements of the Notary deed as an authentic deed. This kind of proof must be done through a lawsuit to the Court. The plaintiff must be able to prove that outwardly the deed that is the object of the lawsuit is not a notary deed.

The power of formal evidence is the ability of the deed to provide certainty that an event and fact in the deed is really known and heard by the Notary and explained by the parties who appear, which is listed in the deed in accordance with the procedures that have been determined in the making of the Notary deed. The Notary Deed must provide certainty that an event and fact mentioned in the deed was actually carried out by a Notary or explained by the parties appearing at the time stated in the deed in accordance with the procedures specified in the making of the deed. Formally the deed proves the truth and certainty about the day, date, month, year, time of appearance, and the parties appearing, initials and signatures of the parties/appearing, witnesses and notaries, as well as proving what is seen, witnessed, heard by a Notary (on the official deed/minutes), and record the statements or statements of the parties/appearers (on the parties' deed).

The strength of material evidence is certainty about the material of a deed. Certainty Regarding the material of a deed, it is very important that what is stated in the deed is valid evidence against the parties who made the deed or those who have rights and apply to the public, unless there is evidence to the contrary (tegenbewijs). Information or statements that are contained/contained in the official deed (or minutes), or the statements of the parties given/delivered before a Notary and the parties must be judged to be true. The words which are then stated/contained in the deed shall be valid as true or every person who comes before the Notary whose statements are then stated/included in the deed must be judged to have correctly said so. If it turns out that the statements / statements of the appearers are not true, then it is the responsibility of the parties themselves. Notaries are exempt from such things.

In this context, it is important to note that the scope of the task of carrying out the position of a Notary is to produce evidence that is desired by the parties for a certain legal action and that evidence is at the level of civil law. The notary makes a deed because there is a request from the parties who appear, without a request from the parties, the notary will not make any deed. Notary

makes the intended deed based on evidence or information or statements of the parties stated or explained or shown to or before the Notary.

However, in carrying out their duties, the notary must pay attention to the rules and regulations stated in the UUJN regarding the procedures for making an authentic deed so that the deed he makes does not lose its authenticity, such as in terms of the identity of the parties, the requirements of a witness, anyone. who may and may not be a witness, the domicile of the notary, provisions regarding notary leave and so on. In other words, the notary is required to be responsible for the deed that has been he made. If the deed he made turns out to contain a dispute, it can be questioned whether the deed was a notary's fault or the fault of the parties who were dishonest in providing their information to the notary, or there was an agreement that had been made between the notary and one of the parties facing the court. . If the deed issued by a notary contains a legal defect that occurs due to the notary's error either due to his negligence or because of the notary's own intention, then the notary must provide accountability.

Thus, a Notary in carrying out his duties and obligations in a deed materially cannot be accused of being a party to the occurrence of a criminal act. The material truth of a deed is basically the responsibility of the parties while the formal truth of the deed is the responsibility of the notary concerned. Therefore, theoretically it can be said that a notary can be released from criminal charges unless it can be proven otherwise.

A notary in his authority as a public official appointed by the state to make a deed must be responsible for what he made, so it is fitting that a notary must be careful and careful in making a deed. The problem is, the UUJN does not explicitly regulate the concept and system of criminal liability for Notaries, so that this can create legal uncertainty for Notaries.

2. Summoning of a Notary by Investigators According to UUJN and KUHAP

In the construction of notarial law, one of the duties or positions of a Notary is to formulate the wishes / actions of the appearers / the appearers into the form of an authentic deed, taking into account the applicable legal rules. The legal construction, among others, is stated in the jurisprudence of the Supreme Court of the Republic of Indonesia, namely "The function of a notary is to only record/write down what is desired and stated by the parties who appear before the notary. There is no obligation for the Notary to investigate materially anything (things) put forward by the appearer before the Notary." Based on the substance of the Supreme Court's Decision, if the deed made before a notary is disputed by the parties, then it becomes the business of the parties themselves, the notary does not need to be involved, because the notary is not a party to the deed. So with such a legal construction, it is very difficult to accept based on legal logic if a Notary is positioned as a defendant related to a deed made before or by a Notary who is indicated as a criminal. CHAPTER IV of the Permenkumham regulates the Terms and Procedures for Summoning a Notary, namely in the following manner:

a. Investigators, Public Prosecutors, or Judges for the purposes of the judicial process may summon a Notary as a witness, suspect, or defendant by submitting a written application to the Regional Supervisory Council with a copy to the Notary concerned.
b. The application contains the reasons for summoning a Notary as a witness, suspect, or defendant.
c. The Regional Supervisory Council approves the summons of a Notary if there is an alleged criminal act related to the Deed and/or documents attached to the Minutes of Deed or Notary Protocol in the Notary's depository, or the right to sue based on the provisions regarding expiration in the laws and regulations in Indonesia has not expired. criminal field.
d. The approval of the Supervisory Board is given after hearing the statement from the Notary concerned.
e. The Regional Supervisory Council does not give approval to the Investigator, Public Prosecutor, or Judge to summon a Notary as a witness, suspect, or defendant if he does not fulfill the provisions of point 3 above.

f. The Regional Supervisory Council is obliged to give approval or not to give written approval within a maximum period of 14 (fourteen) days from the receipt of the application letter.
g. If within a period of 14 (fourteen) days as of the receipt of the application letter is exceeded, then the Regional Supervisory Council is deemed to have approved it.

The next regulation regarding the Notary investigation process, both as a suspect and as a witness was made between the Indonesian National Police with INI and IPPAT, namely the Memorandum of Understanding Number: 01/MOU/PP-INI/V/2006 concerning Professional Development and Improvement in the Field of Law Enforcement (hereinafter referred to as the Memorandum of Understanding).

With the decision of the Constitutional Court of the Republic of Indonesia Number 49/PUU-X/2012, the Investigator or Public Prosecutor or Judge in taking a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or Notary Protocol in the Notary's depositary and summoning the Notary to attend in the examination related to the deed he made or the Notary Protocol that is in the Notary's deposit, it is no longer necessary "with the approval of the Regional Supervisory Council". The Constitutional Court's decision Number: 49/PUU-X/2012 which has nullified or terminated the authority of the Regional Supervisory Council (MPD) as stated in Article 66 paragraph (1) of this UUJN has made the Notary community "surprised", because it seems that there is no longer protection law for Notaries in carrying out their duties.

The right to deny a notary can be used when a notary acts as a witness in a civil case (Article 1909 paragraph (3) of the Civil Code, Article 146 paragraph (1) of HIR) and criminal (Article 170 of the Criminal Procedure Code) in a trial in court relating to a deed made before or by Notary and all information obtained in the making of the deed.

This Notary Denial Obligation is based on Article 4 paragraph (2), Article 16 paragraph (1) letter e and Article 54 UUJN. In Article 4 paragraph (2) of the UUJN it is emphasized that the Notary has sworn/promised, among other things, "that I will keep the contents of the deed and information obtained in the exercise of my office confidential." Article 16 paragraph (1) letter e of the UUJN also stipulates that a Notary is obliged to "keep everything about the deed he made and all information obtained for making the deed in accordance with the oath/promise of office, unless the law provides otherwise." Elucidation of Article 16 paragraph (1) letter e UUJN states that "The obligation to keep everything related to the deed and other documents is to protect the interests of fellow parties related to the deed." Then in Article 54 of the UUJN it is stated that "Notaries can only give, show, or notify the contents of the deed, grosse deed, copy of deed or deed excerpt, to people who have a direct interest in the deed, heirs, or people who have rights, unless otherwise determined by the law. legislation." UUJN has placed the Obligation of Notary Denial as a Notary Obligation, meaning something that must be carried out without any reason

3. Implementation of the Notary's Duties After the Sentence Period is Complete

Article 1 point 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004, confirms that what is meant by supervision is activities that are preventive and curative, including coaching activities carried out by the Supervisory Council against Notaries. The supervision carried out by the Assembly is not only the implementation of the duties of the notary's position in accordance with the provisions of the UUJN, but also the notary code of ethics and the behavior or behavior of a notary's life that can injure the dignity of the notary's position. In the supervision of the Supervisory Council (Article 67 paragraph (5) UUJN), this shows the very wide scope of supervision carried out by the Supervisory Council. Supervision of the implementation of the duties of a notary position with a definite size in the UUJN with the intention that all provisions of the UUJN governing the implementation of the duties of a notary office are complied with by a notary, and if there is a violation, the supervisory board will impose sanctions on the notary.

The Law on Notary Positions (UUJN) basically stipulates guidelines on the responsibility of a notary as a public official and the forms of sanctions that can be imposed on a notary if a notary

commits violations that have been determined by UUJN. The said accountability includes accountability in administrative, civil and code of ethics aspects. The UUJN stipulates that when a notary in carrying out his duties and positions is proven to have committed a violation, the notary can be subject to sanctions in the form of administrative, civil and code of ethics sanctions. These sanctions have been regulated in such a way both in the UUJN and the Code of Ethics for Notary Positions.

However, UUJN does not explicitly regulate criminal sanctions against notaries. In other words, the UUJN does not at all contain the concept of a notary's criminal responsibility. Whereas in practice in the field it is often found that a legal action or violation committed by a notary related to the authentic deed he made is qualified as a criminal act. In this context, investigators, public prosecutors and judges generally apply articles in the Criminal Code to drag a notary into a criminal case. The application of the articles of the Criminal Code occurs because the UUJN does not contain provisions on criminal sanctions against a notary in his position as a public official. The UUJN stipulates that when a notary in carrying out his duties is proven to have committed a violation, the notary can be subject to or sanctioned. Sanctions against a notary are regulated in Articles 84 and 85 of the UUJN.

Criminalizing a notary by applying the articles of the Criminal Code without being preceded by an in-depth study of the concept of criminal liability of a notary is an act that cannot be justified scientifically and legally. Therefore, efforts to formulate the concept of criminal liability of a notary is an important step that must be taken to avoid the symptoms of arbitrary criminalization of a notary as a public official.

Notaries who are in suspect status, are still allowed to make a deed, because someone who has just become a suspect is not necessarily guilty and we must also uphold the principle of presumption of innocence, namely the principle of presumption of innocence and the principle of presumption of innocence for the deed made by the Notary. Prior to the final decision from a trial, the Notary was not guilty and the status of the notary was still an active notary and the deed he made still had legal force against the parties mentioned in the deed. A Notary has no authority in terms of making a deed if the Notary is suspended, fired, retired.

In the event that the Notary as a suspect does not prevent the Notary from making a deed unless there is a ministerial decree to dismiss him. So, A notary is still authorized to make a deed if he is not on leave and is not dismissed as a notary.

In Article 9 paragraph one (1) letter e of Law Number 12 of 2014 concerning the Position of a Notary, it is stated that a Notary is temporarily dismissed from his position, because:

a. In the process of bankruptcy or suspension of debt payment obligations;
b. Is under custody;
c. Commit a disgraceful act;
d. Violates the obligations and prohibitions of positions;
e. Currently in detention.

In this case, a notary who is serving a sentence is temporarily suspended for his position as a notary and seen in Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of a notary, Article 3 letter (h) regarding the requirements to be appointed as a Notary, it is said that "Has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more", basically according to this Article a Notary who is sentenced to a sentence of more than 5 (five) years in prison does not can be appointed as a notary, because he does not meet the requirements to become a notary, but if the sentence is below 5 (five) years in prison, and has completed his sentence, the notary can still carry out his duties and obligations automatically

IV. CONCLUSION

A notary deed as an authentic deed has perfect evidentiary power so that the parties who read the deed must see what it is and the notary does not need to prove anything for the deed made before or by a notary. Based on the construction of Notary Law, one of the duties of a notary's position is "to formulate the wishes / actions of the parties / parties into the form of an authentic deed, taking into account the applicable legal rules". In addition, the Supreme Court Jurisprudence No. 702 K/Sip/1973, dated September 5, 1973 stated: "The function of a notary is to only record/write down what is desired and stated by the parties who appear before the notary. There is no obligation for a notary to investigate materially anything (things) put forward by the appearer before the notary." For example, information based on a marriage certificate shown to a Notary or Identity Card (KTP) which from physical observation is original. If it is proven that the marriage certificate or ID card is fake, it does not mean that the Notary has ordered to include false information in the authentic deed, something that is impossible for a notary to do. So it can be concluded that the Notary is not obliged to examine the documents provided by the parties in this case to the Notary, because only the parties who know and are responsible for the truth of the document are shown to the Notary.

With the enactment of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which was ratified in Jakarta on January 15, 2014, the State Gazette of the Republic of Indonesia of 2014 Number 3, the authority of the MPD has changed become the authority of the MKN (Notary Honorary Council) in relation to the examination of the legal process as contained in Article 66 of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary and when the notary fulfills the summons to the public investigators, notaries can also state that they will use their obligations The denial is as regulated in Article 4 paragraph (2) of the UUJN and Article 16 paragraph (1) letter f and Article 54 of Law No. 2 of 2014. The statement using the Obligation to Deny is recorded in the Minutes of Investigation (BAP). The statement using the obligation to deny it does not need to be accompanied by any reason, but merely carries out the UUJN orders. If a notary uses the Obligation to Deny, the investigator, public prosecutor or judge cannot impose his will on the notary and/or threaten the notary with the threat of obstructing the investigation/judicial process, because Article 117 paragraph (1) of the Criminal Procedure Code states firmly that "the statements of suspects and/or witnesses given to investigators without pressure from anything and/or in any form."

Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of a notary, Article 3 letter (h) regarding the requirements to be appointed as a notary, it is stated that "Never have been sentenced to imprisonment based on a court decision that has obtained permanent legal force because committing a crime punishable by imprisonment of 5 (five) years or more", basically according to this Article a notary who is sentenced to a sentence of more than 5 (five) years in prison cannot be appointed as a notary, because he does not meet the requirements to become a notary, but if the sentence is under 5 (five) years in prison, and having completed his sentence, the notary can still carry out his duties and obligations automatically without having to repeat the requirements to be appointed as a notary unless someone is just about to be appointed as a notary.

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