

Polemic of Involvement of Notaries As Suspects Based On Article 263 of The Criminal Law Book

Devi Andiya Fidiyanti, Khunsul Yaqin

Faculty of Law Narotama University Surabaya

E-mail: deviandiya@gmail.com/ khusnulyaqin_notppat@yahoo.co.id

ABSTRACT

Purpose of this study is to analyze the criminal liability given to a Notary when he is also a suspect for his duties and authority to make an authentic deed. Second, to analyze the definition of the Notary Position and its duties and authorities. This research uses normative legal research methods. This study concludes: The criminal liability given to a Notary when he is also a suspect and is burdened with Article 263 of the Criminal Code for his duties and authorities to make an authentic deed is very detrimental to the Notary concerned, thus the Notary must have integrity, be smart and adhere to the code ethics and regulations for the position of a notary in carrying out his position. The making of a Notary deed still pays attention to every important point, which is allowed by the laws and regulations, and which is prohibited. Notaries are public officials who have the task and authority to make authentic deeds, in which there is the will of the parties. Then the position of a Notary and its duties and authorities are very much needed for the people of Indonesia, so what has been given by this law must be carried out as well as possible. good by the Notary, so as not to make the Notary a suspect for the authentic deed he made. In this case, the notary is also responsible for fulfilling the responsibilities of the will of the parties stated in the deed he made, so that the notary must be smart and have integrity so that there will be no disputes in the future.

Keywords: Notary, Authentic Deed, Suspect, Dispute

1. INTRODUCTION

Notary is a position that is given the task and authority in making authentic deeds in civil matters granted by the state. In Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Regulation of Notary Positions which states that "Notaries are public officials who are authorized to make authentic deeds and have the authority to copy them as referred to in the Act. this or under other laws." CST Kansil, & Chistine STKansil, emphasized that the position of a Notary as a public official is required to work professionally by mastering the intricacies of his profession in carrying out his duties, notaries must be aware of their obligations to work independently, honestly, impartially, and full of responsibility and professionally (Levi & Reuter, 2006).

Furthermore, Soegondo Notodisoerjo, said that the notary profession must be equipped with in-depth knowledge, because the notary is not only obliged to ratify the signature, but also prepares the deed and provides advice where necessary. has integrity so that his knowledge of every deed he makes can be justified with correct evidence (Rudianto & Roesli, 2019).

The more human resources develop, the more the needs and interests of everyone, both those with good intentions and those with bad intentions will increase for profit. This is what becomes a boomerang for Notaries in carrying out their positions, participating in stumbling in a case, both criminal and civil, the Notary will get a very large loss even directly related to the person of a Notary

himself considering that the position of a Notary is attached to the person of his office holder, and does not separate, such as the position of a state administrative officer (Arief et al., 2019).

Criminal cases that ensnare Notaries are often associated with Article 263 Paragraph (1) of the Criminal Code (KUHP) which reads "Whoever makes a fake letter or falsifies a letter, which can issue a right, an agreement (obligation) or something debt relief, or which may be used as an explanation for an act, with the intention of using or ordering other people to use the documents as if they were genuine and not falsified, then if using them could result in a loss, the penalty for falsification of the letter shall be up to a maximum of six years (Roesli et al., 2017)."

In the course of a career, not a few notaries can only (legally/according to the rule of law) be made a suspect if the notary intentionally keeps making a false deed as requested by the appearer, even though he knows that the parties appearing in the court do not meet the requirements for a valid engagement. . This shows that the notary does not adhere to the Law on Notary Positions (UUJN) and the Notary Professional Code of Ethics. This means that what the notary does leads to the crime of falsifying authentic letters/deeds (Chin & Miller, 2011).

From the description above, this study aims to analyze the criminal liability given to a Notary when he is also a suspect for his duties and authority to make an authentic deed. Second, to analyze the definition of the position of a notary and its duties and authorities.

2. RESEARCH METHOD

This research method is normative legal research, so that more than one research approach can be used (Soekanto, 2010). The subject of this research is "Notary". While the collection of research materials is done by studying the laws and regulations that have a relationship with the problem, in the form of primary data and secondary data. The main secondary legal materials are textbooks because textbooks contain principles of basic principles of law and classical views of scholars who have high qualificatio.

3. RESULTS AND DISCUSSION

Notaries in carrying out their positions must apply every existing rule to maintain the quality and integrity of a Notary, both personally and the products of the deed he made. It is possible that in practice, what is stated in the Law on Notary Positions is sometimes not carried out by Notaries in order to get fast performance without having to go through a long series of bureaucracy.

The risk that the Notary may get in the future does not become a burden when the work of a Notary really requires efficiency and speed so that client satisfaction can be met in various existing transactions. In Articles 1870 and 1871 of the Civil Code (KUH Perdata) it is stated that an authentic

deed is a perfect means of proof for both parties and their heirs and all those who have rights from it about what is contained in the deed. An authentic deed which is complete (binding) evidence means that the truth of the things written in the deed is considered to be true, as long as the truth is that no other party can prove otherwise (Setiadewi & Wijaya, 2020).

According to Article 1868 of the Civil Code, the deed Authentic is a deed made in the form determined by law, made by or in the presence of public officials in power for that purpose at the place where the deed was made. According to Article 1 number (1) of Law Number 30 of 2004 concerning the Position of a Notary (UUJN), a notary is the only one who has this general authority, meaning that he does not participate in other officials. The notary's authority is general in nature, while the authority of other officials is an exception. (GHS.L.Tobing, 1983). The position of a notary is held or its presence is required by law with the aim of helping and serving the community who need authentic written evidence regarding circumstances, events or legal action. On this basis, those who are appointed as notaries must have the spirit to serve the community and for this service, people who feel that they have been served by a notary in accordance with the duties of their position can provide honoraria to the notary. Therefore, a notary does not mean anything if the community does not need it (Arya et al., n.d.).

Criminal Accountability

What is meant by accountability is who can be penalized for a violation of laws and regulations. Talking about criminal responsibility, it cannot be separated from criminal acts. However, in the sense of criminal acts, it does not include criminal liability issues. Criminal acts only refer to those who are prohibited from an act. Criminal acts / offenses / criminal acts and criminal events are not stand alone, it only means when there is criminal responsibility. This means that every person who commits an act by himself must be punished to be sentenced, there must be a criminal responsibility (Baradaran Baughman, 2020).

According to Roeslan Saleh, the main condition for the existence of a criminal act is: "the fact that there are rules that prohibit and threaten to be criminal. whoever violates the prohibition." (Brickey, 1982). This can be seen clearly in Article 1 of the Criminal Code which is the principle of Indonesian criminal law which reads "no act may be punished, but by criminal force in the law, which is earlier than the deed". From the words of Article 1 paragraph 1 of the Criminal Code above, it can be concluded that the provisions of criminal provisions must be stipulated in a valid law. A person is convicted or not, this does not depend on the existence of a criminal act, this is whether a person is reprehensible or not because he has committed the crime. Now the basis of the existence of a criminal act according to Moeljatno, is a legaliteit principle, namely: a principle that determines whether an act is prohibited or threatened with criminal law whoever does it and the basis of a

person's punishment is: the principle of not being punished if there are no mistakes (Brown & Sriram, 2012).

The Notary profession is very vulnerable to being caught by the law. Not only because of internal factors that come from within the Notary himself for example carelessness, not complying with procedures, not carrying out professional ethics and so on, but also because of internal factors such as public morals where the Notary is faced with fake documents even though these documents contain legal consequences for the Notary. the owner (Habib Adjie, nd). The running of the Notary's activities in the field cannot be separated from the many responsibilities he carries, so that sometimes these responsibilities become a time bomb that will be borne for the notary during his life, even though the notary has retired from his position. For this reason, the Notary in carrying out his position must be required to be careful and not careless in making the deed he made, because this concerns the interests of the parties in the deed, so that the Notary is careful in making the deed which is his duty and authority based on Article 16 UUJN.

However, it is possible for a Notary to make a deed which is not done carefully, so in this case the Notary is involved in a legal case in court, both civil and criminal. Article 263 Paragraph (1) of the Criminal Code, hereinafter abbreviated as (KUHP) which states that "Whoever makes a fake letter or falsifies a letter, which can issue a right, an agreement (obligation) or a debt relief, or which may be used as information for an act, with the intention of using or ordering other people to use the documents as if the documents were genuine and not falsified, then if using them can result in something loss, the sentence for falsification of the letter is punishable by a maximum imprisonment of six years."

Article 263 Paragraph (1) of the Criminal Code is often an article that plunges a Notary into a criminal case, so that this is very detrimental to the Notary concerned, in addition to being disturbed in his work at the office, this also causes the good name of the Notary to be polluted and not trusted by society. Criminal law is part of public law that prioritizes pressure from the public interest on a society. The existence of a criminal liability must meet the requirements, namely by looking at the existence of an act that can be punished, by stating the elements explicitly and based on the law which stipulates that the act is contrary to the law which is a criminal crime, where the perpetrator must be able to account for the cause and effect. of the criminal act (Chapman, 2010).

Definition of Notary Position Duties and Authorities

Act No. 30 of 2004 concerning the position of a notary. Article 1 of the law confirms that a notary is a public official with the authority to make authentic deeds and other authorities as referred to in this law. In general it can be concluded, what is meant by a notary is a public official who is authorized to make an authentic deed regarding all actions, agreements and stipulations required by

a statutory regulation and or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of manufacture. the deed, keep the deed, provide grosse copies and quotations, all as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law. As regulated by article 1868 of the Civil Code in *conjunction with* article 1 and article 15 of the UUJN number 30 of 2004. Article of the UUJN number 30 of 2004 has explained the authority for a notary to make an authentic deed in terms of deeds, agreements, and provisions required by regulations. legislation.

Notary as a position (not a profession or profession), and any position in this country has its own authority. Every authority must have a penalty. If we talk about authority, then the authority of any official must be clear and firm in the laws and regulations governing the official. So if an official acts outside his authority, it is called an unlawful act. The authority of a notary includes the duties of a position which is the main task of a notary, namely the making of an authentic deed (other authorities as referred to in Article 15 UUJN number 30 of 2004).

The function of a Notary in his field of work is to be obligated and responsible primarily for making authentic deeds that have been entrusted to him, especially in the field of civil law, keeping the minutes of the deed, including all Notary protocols and providing grosses, copies and excerpts. In addition, the Notary has the function of registering private letters, making and ratifying copies or derivatives of various documents and providing legal advice. In connection with the main task of a notary, namely in terms of making an authentic deed, which according to Article 1870 of the Civil Code provides an authentic deed to the parties who make it an absolute proof, Soegondo Notodisoerjo stated as follows:namely: Herein lies the importance of the notary profession,that because of the law he is authorized to create absolute evidence, in the sense that what is stated in the authentic deed is basically considered true. This is very important for those who need evidence for purposes, both for personal interests and for the benefit of a business. What is meant by personal interests are, among others: making a testament, recognizing children born outside of legal marriage, giving and receiving grants, distributing inheritance, and so on. What is meant for the benefit of a business are deeds made for activities in the business sector, among others the deed of establishing a limited liability company, firm, Comanditair Venootschap and so on (Hendra, 2012).

4. CONCLUSION

Cases involving a Notary so that he becomes a suspect in a criminal case that focuses on Article 263 of the Criminal Code, then in this case the Notary in carrying out his position and fulfilling his duties and authorities to make an authentic deed, should be supported by qualified knowledge and integrity based on the Notary Code of Ethics and the Notary Position Regulations.

Thus, in making a deed, the Notary still pays attention to every important point, which ones are allowed by the laws and regulations, and which ones are prohibited. A notary is a public official who has the duty and authority to make an authentic deed, in which there is the will of the parties. Thus the Notary in this case is also responsible for fulfilling the responsibilities of the will of the parties stated in the deed he made, so that the Notary must be smart and have integrity so that there will be no disputes in the future.

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