



Juridical review of notary accountability for making the deed that arouse criminal cases (Case Study of Supreme Court Decision No. 1014 K/PID/2013)

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Abstract

This study has aims to find out how the notary's accountability in carrying out the task of making a deed that arouse a criminal case, how the legal consequences for it, and what are the things that make a notary public involved in falsifying a notary deed relating to Supreme Court Decision Number 1014 K / PID / 2013. This research used doctrinal and then analyzed by prescriptive approach by using secondary data sources from primary and secondary legal materials to analyze various laws and regulations in Notary law and regulations concerning ethical codes of notary. The results of this study indicate that the Notary Ninoek Poernomo (defendant) had violated the UUJN and the Notary ethical codes and was consciously violated Article 264 of the Criminal Code so that she was responsible for what she had done. Regarding the deed, it is not automatically canceled but becomes a fraudulent act; it can only be canceled by a judge's decision through a civil complaint. Some of the factors that cause a Notary to be involved in a criminal act are notary ethics and takes a side with one party, the valid data submitted by the parties related to the Notary, Notary supervision, and false rules.

Keywords: notary, notary accountability, court decision

1. Introduction

Notary profession is a noble profession (*nobile officium*). It is known because the Notary profession is very closely related to humanity. Deed made by a Notary may be a legal reason for the status of property, rights and obligations of a person. Errors in the notary deed can lead to revocation of one's right to an obligation^[1].

Notary as one of the pillars of national law enforcement, in carrying out his profession, besides having to be based on the Act, he also must uphold the moral values of the profession. The professional values must be adhered to by the legal apparatus that carry out the profession, as follows: Honesty, Authentic, Responsible, moral independence, and Moral Courage^[2].

Notaries in carrying out their duties as public officials have gained legitimacy in the national legal system through Law Number 2 of 2014 concerning Amendments to Law Number 30 Year 2004 concerning Notary Position contained in the State Gazette of the Republic of Indonesia Number 3 of 2014. Notary in carrying out the duty and position must always be guided by laws and regulations, the Notary Ethical Code (hereinafter referred to as KEN), and morals because if a violation committed by a notary will be very detrimental to the parties. If the deed made contains legal defects due to a notary error caused by negligence or intentional notary itself, then the notary must gave moral and legal responsibility in accordance with the Act of Notary Position (hereinafter referred to as UUJN) and KEN. Notary as a public official who is authorized to make a deed containing formal truth in accordance with what the parties notify the notary. According to Soebekti, the so-called deed

is a writing that is solely made to prove a thing or event, therefore a deed is always signed^[3].

Notaries as public officials must be sensitive, responsive, smart and be able to provide proper analysis of every legal phenomenon and social phenomenon that emerges so that it will raise an attitude of courage in taking appropriate action. Courage referred to here is the courage to carry out legal actions that are correct in accordance with the laws and regulations that apply through the deed he made and expressly reject the making of deeds that are contrary to law, morals and ethics^[4]. According to Nuel Cox, The Notary is a civil lawyer practising in non-contentious matters, but does not have the same relationship with his or her clients, as does a solicitor^[5]. Translation: A notary is a civil lawyer who practices in matters that are not controversial, but does not have the same relationship with his client, as a lawyer.

According to Article 15, paragraphs 1 and 2 are amended in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position that a notary has the authority to make authentic deeds concerning all acts, agreements, and stipulations required by legislation and / or desired by those concerned to be stated in an authentic deed, ensure the date of making a deed, keep in save a deed, giving a grosse, copy and quotation of the deed, all of which as long as the deed is not assigned or excluded to other officials or other persons stipulated by law, legal counseling in connection with making deeds and also making deeds relating to land can also be provided by a

³ R. Soebekti, 1996. *Pokok-Pokok Hukum Perdata*. (Intermasa, Cet XXVIII. Jakarta), hlm 178.

⁴ Wawan Setiawan, *Sikap Profesionalisme Notaris dalam Pembuatan Akta Otentik*, Jurnal Media Notariat, Edisi Mei-Juni 2004, hlm 25

⁵ Nuel Cox, *The Notary Public the third arm of the legal profession*, Barrister and lecturer in Law, Auckland University of Technology (2000) 6 *New Zealand Business Law Quarterly* 321-335, hlm 4.

¹ Abdul Ghofur Ansohri, *Lembaga Kenotariatan Indonesia; Perspektif Hukum dan Etika*, (Yogyakarta: UII Press, 2009), hlm. 25.

² Abdulkadir Muhammad, *Etika Profesi Hukum*. (PT. Citra Aditya Bakti, Bandung, 2001), hlm. 4

Notary.

The professionalism of notary performances requires three characteristics, they are

1. It reflects the intention to realize the virtues that are upheld in society.
2. It is done based on high-quality technical skills,
3. The technical and moral quality that is highly required in the work of giving professional services in its implementation must subject itself to the control of fellow organized citizens based on a code of ethics ^[6].

From the description above, related to the issue of Notary's ethical code and legal responsibilities in carrying out their profession, there are cases of making Notary deeds based on interesting illegal actions to be studied. The case occurred in Surakarta City, Central of Java Province which had been decided by the Supreme Court in Decision Number 1014 K / PID / 2013.

Briefly the problems that occur in cases involving a notary public in the Supreme Court Decision number 1014 K / PID / 2013 was as follows:

Whereas at first the Defendant in the position of Notary was asked by Robby Sumampao (his prosecution was filed in a separate file) as the a Head of Foundation's Board to process the adjustment of the Surakarta Social Service Foundation (YBSS) in accordance with the new Foundation Law Number 28 of 2004 concerning amendments to Law Number 16 Year 2001 concerning Foundations.

In fact, Notaries in carrying out their duties and positions often did not follow the provisions of Law No. 30 of 2004 concerning Notary Position, as mentioned above, where the Minutes of Surakarta Social Service Foundation Meeting Number: 58 dated April 15, 2008 as an authentic deed of the notary product Ninoek Poernomo, SH, was not based on the facts of the actual incident but was made first in draft form before a meeting or counseling at Robby Sumampao's house in the Hailai Complex on Adi Sucipto Number 146, Jajar Village, Laweyan District, Surakarta City.

During the meeting or convention, the parties signed a Deed whose form was still drafted and the absent party was asked to sign at a different time and place and there was no real incident for all Foundation coaches and all Foundation Managers who came to the Defendant as a Notary to issued a Deed of Minutes of the Meeting.

In this study, we will discuss how the notary's accountability in carrying out the deed making assignments that arouse to criminal cases relating to the Supreme Court Decision Number 1014 K / PID / 2013 and how the legal consequences of notary deed that arouse to criminal cases are related to Supreme Court Decision Number 1014 / K / PID / 2013 and what are the things that make a notary public involved in a criminal act of falsifying a notary deed relating to Supreme Court Decision Number 1014 K / PID / 2013?

2. Research methods

The research method used was a normative research method, the research carried out by examining library material that included the principles of law, legal systematics, comparison of law and legal history, in addition

⁶ Soetandyo Wignjosoebroto, *Profesi Profesionalisme dan Etika Profesi*, (Media Notariat, 2001), hlm. 32

this study also examined the application of rules or norms in law positive. The nature of this research was prescriptive, which was intended to provide an argument for the results of research that has been done. The argument here was done to provide prescriptive or research regarding right or false according to law against facts or legal events from the results of research. This research was doctrinal, therefore used secondary data consisting of: Primary legal material in the form of legislation governing the position of a notary; Secondary legal material in the form of literature on notary positions and notary ethical code; and tertiary legal material in the form of a Legal Dictionary. The analysis technique was used with a normative descriptive approach and combined with the facts and it found in the field, especially related to the application of rules in the field of notary responsibility in carrying out the task of making deeds that gave rise to criminal cases.

3. Results and Discussion

3.1 Notary's Accountability in carrying out his duties of Making Deeds that arouse Criminal Cases Regarding the Decision of Supreme Court Number 1014 K / PID / 2013

Notary's roles in the implementation of the foundation deed based on Law No.28 of 2004 concerning the foundation, as follows ^[7].

1. Describe the conditions for making Deed of Establishment to the founders.
2. Make Deed of Establishment.
3. Submitting ratification to the Minister of Law and Human Rights.

Based on above, the notary's responsibility for Deed of Establishment was that the notary is responsible for the formal and material truth of the foundation's Deed of Establishment and the notary is also responsible for submitting legitimation for foundation's deed of establishment to the Minister of Law and Human Rights. Based on the description above it can be concluded in this case, that the Notary was sentenced by a Judge with Article 264 paragraph 1 of the Criminal Code can be said to be right can be seen from the existence of participation, intentional and formal and material truth in the Deed of Establishment which was not true conducted by the Notary.

Notaries fulfilled the intentions point in criminal acts of falsifying of letters which are aggravated because the object of this letter contained a high value of trust, which could be seen from the prosecution's charges as follows.

- 7 (seven) participants had attended in the list but the signatures signed by 8 (eight) people
- There was a signature of someone who passed away on February 28, 2008, while the deed was dated April 15, 2008.
- In changing the name of the Trustees, the Defendant did not carry out the procedure that should have been taken by a Notary.
- Deed of Minutes of Meeting as Authentic Deed of Notary products was not based on facts of actual events but have been made in draft form before meetings.
- At the meeting the parties signed in draft form, the

⁷ Titik Hariati, *Peranan Notaris dalam Pelaksanaan Pembuatan Akta Pendirian Yayasan berdasarkan Undang-Undang No. 28 Tahun 2004 tentang Yayasan pada Yayasan Satunama Yogyakarta*, (Tesis Magister Kenotariatan, Universitas Gajah Mada, 2012), hlm 68

absent party was asked to sign at a different time and place and there was no real incident of all the Trustees and the foundation management coming to the Defendant as a Notary.

- Defendant as the appointed Notary had taken action to revoke registration / notification to the Minister of Law and Human Rights so that the Surakarta Social Service Foundation formally had not fulfilled Article 71 paragraph (3) to obtain ratification from the Ministry of Law and Human Rights so that this incident had experienced a problem that caused both material and immaterial losses.

In addition to the criminal offenses that have been committed, notary Ninoek Poernomo has also violated the provisions of Law Number 2 Year 2014 concerning Notary Position, which among them have violated the provisions of Article 16 paragraph (1) letter a, it is "acting trustworthy, honest, thorough, independent, impartial, and keep the interests of the parties involved in legal actions "so that the notary can be subject to sanctions in the form of written warnings, temporary dismissals, respectful dismissals, and disrespectful dismissals stated in Article 16 paragraph (11). Meetings that are not attended by all members of the supervisory board and members of the foundation be ascertained that the notary does not read the deed to the parties, which is a violation of Article 44 paragraph (1) of Law No. 2 of 2014 which reads as follows "Immediately after the deed is read, the Deed is signed by each observer, witness, and notary, unless there is an observer who cannot sign by stating the reason".

Notary Ninoek Poernomo was sentenced to 8 months imprisonment by the Panel of Judges in the first level court so that the notary could be temporarily dismissed from his position because he was undergoing a period of detention as stated in Article 9 paragraph (1) letter e of Law Number 2 of 2014. However in Article 9 paragraph (2) states that before a temporary dismissal is carried out, the Notary is given the opportunity to defend himself before the Supervisory Board.

3.2 Legal consequences on the deed issued causing criminal cases regarding the decision of supreme court number 1014 K / PID / 2013.

Notary Ninoek Poernomo was officially and convincingly, intentionally and consciously committed a crime and then was punished, but in the Supreme Court's decision it was not stated how the validity of the deed issued by the notary was subsequently.

Criminal punishment against a Notary not necessarily the deed concerned is null and void by law. A matter that is not legally appropriate if there is a criminal court ruling with a verdict canceling the Notary deed with reason that the Notary is proven to have committed a falsifying act.

Thus to place a Notary as a convict, on the deed made by or before the Notary concerned, then the legal action that must be taken is to cancel the deed concerned through a civil suit. The party who feels aggrieved from the issuance of the Deed of Establishment of the Surakarta Social Service Foundation must submit a civil suit to the local District Court to cancel the deed, and can also claim compensation that can be submitted in the lawsuit.

One of the arguments that could be put forward was in the public prosecutor's written statement that there was never a meeting attended by all members of the supervisory board

and members of the foundation, so it can be ascertained that the Ninoek Poernomo notary read the deed to the parties, which was a violation Article 44 paragraph (1) Law No. 2 of 2014 which reads as follows "Immediately after the deed is read, the Deed is signed by each observer, witness, and notary, unless there is an observer who cannot sign by stating the reason".

And Article 44 paragraph (5) reads as follows: "Violation of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) results in a Deed only having proof power as an underhanded deed and can be a reason for those who suffer losses to demand reimbursement, compensation, and interest to the notary. "

3.3 Things that make a notary involved in the falsifying of notary deed against the material truth of the deed made

In the case of the Supreme Court Decision Number 1014 K / PID / 2013, in the indictments described by the Public Prosecutor there were many documents or statements submitted by parties whose material truth was very doubtful. A good and professional notary in this matter should act actively by finding out whether the documents or information given to him are correct in order to prevent the notary from getting involved in a later matter, but if the prosecutor charges and from the chronological case, the notary will support or it can be said to help one of the parties who are also convicted.

Notary ethics in carrying out their duties

In 1686 Ulrik Huber, *raadsheer in't Hof van Friesland*, had said in ancient Dutch about a notary:

Een eerlijk man, tot het instellen van allerhande shriftuir bequamen ende bij publijke autoriteit daartoe verordineert

Translated

An honest person, who is good at making all writing, and is appointed by a public official for that.

The ordinance at that time stipulated that

Niemand tot den staet notary geadmitterd zal worden and vermaerde ende wel gemanierde lieden, die bequaem en ervaren moeten zijn

Translated

No person is permitted to hold a notary position but people who are well-known, polite, and clever and experienced.

No person is permitted to hold a notary position but people who are well-known, polite, and clever and experienced.

Function of notary organization did not optimize yet

In 1983 the Indonesian Notary Association issued a circular letter discussing the irregularities often made by notaries, they are ^[8].

(a) Deed not read out

(b) Branch office

Although the Department of Justice has repeatedly banned notaries from having more than one office, it turns out that there are still partners who have branch offices. The two acts of deviation referred to in points a and b are very

⁸ Tan Thong Kie, *Studi Notariat dan Serba-Serbi Praktek Notaris*. (PT Ichtar Baru Van Hoeve, Jakarta. 2011), hlm 459

contrary to the UUJN and the Code of Ethics. Regarding deviations made by colleagues, the Management of the Center has taken a stand:

1. Does not justify the manipulations carried out by members or non-members of INI.
2. The INI Center's Management will support the efforts of government officials to examine the manipulations made by colleagues, because INI Administrator is obliged to maintain the dignity of the notary profession, in accordance with the meaning of the provisions in PJJN and other positive laws and Notary Ethical Code, and also INI Executive Board was not willing to see other colleagues who did not become the perpetrators to feel the consequences of this disgraceful act.

Inappropriate Regulations. The case that occurred in this Decision took place in 2008 where the UUJN at that time was Law No. 30 of 2004 which had not clearly and detailed regulated the penalties for notaries but after the issuance of Law No. 2 of 2014 concerning the Position of Notary it was still not regulated clear and detailed about what violations and case are like, so the notary must be accountable for his actions. Notaries who have carried out their duties honestly, professionally, and in accordance with existing procedures are often blamed if later the certificate issued is problematic. In addition, laws that are made usually have criminal sanctions.

4. Conclusion

1. Notary's accountability in the case of the Supreme Court Decision Number 1014 K / PID / 2013 was that in this case the public prosecutor sentenced the notary with Article 264 paragraph 1 with a claim of one (1) year imprisonment which the judge declared that the notary was proven valid and convincing guilty of committing a criminal act of falsifying an authentic deed and imposing a sentence of 8 (eight) months in prison. Article 264 paragraph 1 imposed on the notary in this case is quite appropriate because Article 264 of the Criminal Code is a falsifying of authentic deeds which is aggravated because the object contains high trust. In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary, it has not been clearly regulated regarding the boundaries and forms of violations so that the notary must be accountable for his actions. The existence of sanctions or rules as a form of clearer notary responsibility is also expected to protect the notary from matters that the notary should not need to be involved in.
2. The legal consequences of the issuance of notary deeds that arouse criminal cases in the case of Supreme Court Decision Number 1014 K / PID / 2013 are those issued as legal deeds. A notary intentionally issues a deed he knows contains incorrect information. Therefore, the party who feels disadvantaged due to the deed issued by the notary becomes a legal defect can prove the accusation through a legal process of a civil suit in the District Court. Because only through the decisions of civil judges in the District Court, the deed can be canceled and demand compensation.
3. Things that make a notary public involved in criminal acts, especially in the case of falsifying notary deed relating to Supreme Court Decision Number 1014 K /

PID / 2013, in this case the notary did not follow the rules in UUJN such as impartial notaries and only met false interests one party, knowing that the documents submitted by the respondent were incorrect but did not prevent, did not read the deed before the parties, did not optimize the function of the notary organization in the form of supervision of the notary, and the form of regulation was still unclear even though the UUJN had been revised. Clear and more detailed regulations can provide protection to the notary in carrying out his duties as a public official and provide legal certainty.

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