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RESEARCH ARTICLE

NOTARY'S RESPONSIBILITY ON THE USE OF POPULATION DATA.

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Abstract

The responsibility of the Notary to the demographic data of the constituents is limited to formal truth, so that the Notary can't be held accountable for the misuse of the population data if the Notary has exercised its authority under the laws and regulations. However, a Notary may be held liable if negligent or intentionally makes Deed based on incorrect population data, such liability may be civil liability, criminal liability and administrative responsibility. The legal consequences of the deed to the incorrect use of population data are degraded into a deed that only has the power of proof as a deed under the hand if it can be proved in the judicial process. And if the deed has become a deed under hand then the value of verification shall be submitted to the judge, whether the deed is still a deed under hand, canceled or null and void.

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Introduction:-

Indonesia is one of the developing countries in the world that has a very large population and spread over several islands both large island and small island. As an archipelagic country, the population of Indonesia has uneven distribution, there are some islands with very high population density and some with low population density. The various problems that result from the uneven spread of the population often arise and make the government should be able to act as soon as possible to take a policy that is solutive to the problems faced.

The accuracy and availability of data on the complete population in development in our country is an aspect that plays a very important role. It demands the hard work of state organizers from the central level down to the lowest level in collecting and ensuring the availability of the necessary population data in order to support good population information for the authorities in formulating a policy in Indonesia.

The rapid population growth also occurred in the provinces of South Sulawesi and in Makassar City, based on data from the Department of Population, civil registration, population control and family planning in South Sulawesi Province in 2017 reached 9,522,503 and Makassar 1,663,479 people¹. The large number of residents and then generate many dynamics that require special attention from the government. The government must be able to solve the problems related to population problems.

¹ Data from the office of population affairs, civil registration, population control and family planning Year 2017.

One official who is closely related to the population data is a Notary Public, because before Notary makes the Deed, the Notary has an obligation to recognize the confronters. The regulation governing Notary is Law Number 2 Year 2014 regarding the amendment to Law Number 30 Year 2004 concerning Notary Position, hereinafter referred to as Notary Position Law. Based on the Notary's Office Law, a Notary is a public official authorized to make an authentic deed and has other authorities as defined in this Law or under any other Law. Article 39 Paragraph (2) of the Notary Public Law stipulates that the interrogator must be known by a notary or introduced to people by 2 (two) witnesses who are at least 18 (eighteen) years old or have married and are capable of legal action or introduced by 2 (two) other interceptor. The Notary's way of knowing in the making of the deed is known based on the resident document shown to the Notary, the most widely used written identity is the Identity Card.

In general, the deed is a signed letter, containing information about the events or things that are the basis of a right or a covenant, it can be said that the deed is a writing with which declared something of legal action². Through the deeds made, the Notary must be able to provide legal certainty to the community of Notary service users³. Deed made by Notary deliberately authenticates all acts, agreements and determinations witnessed by witnesses⁴.

Notary in exercising his authority is not immune from law, so that at any time can be made a suspect because of the legal products issued. One example of the case revealed by one of Notary is the falsification of falsifying population data in the form of residence document identity card from the married couple (first wife) who is legitimate when wanting to do the mortgage in one of the banks owned by State-Owned Enterprises. The first married couple (first wife) are aware that their demographic data has been abused when she also wants to take the installment and check the report issued by the bank in one of the banks that is a state-owned enterprise. This is evidenced by the demands of the party who misused the population data to the notary in question.

The more widespread and easy misuse of population data in Indonesia for example by creating a false population document to make Notary must be very careful with the data of residence which will be poured firmly in the Deed. Based on the description in the background above, the following problems can be formulated as follows: What is the form of the Notary's responsibility to the demographic population data and How does the law deed affect the improper use of population data.

Method of the Research:-

This research uses normative law research type. Normative law research using normative case studies in the form of legal behavior products, namely by reviewing the provisions of legislation, and equipped with empirical data that is in the form of interviews. Sources of secondary legal materials used are related documents while the primary legal materials used are interviews with the authorities. The material obtained was analyzed qualitatively then presented descriptively.

Results and Discussion:-

Responsibility of Notary Against Population Data of Against:-

Population data is closely related to Notary Public, Notary Public Officer is authorized to make an Authentic Deed. Before making an authentic deed the responders must be recognized by the Notary or introduced to him by 2 (two) witnesses who are at least 18 (eighteen) years old or have married and are competent to engage in legal action or be introduced to people by 2 (two) other interrogators.

Attempts to recognize this constraint are in order to be able to decipher the data relating to the complete confrontation in the Deed and the interception can be personified so well that any person who read the Notary Deed will not be mistaken or wrong in identifying the interceptors referred to in the Notarial Deed. the Understanding is known in this deed is known legally that is known based on identity or valid document of residence containing the name, address, place and date of birth known by the public or society as true that it is the person concerned so that can be distinguished from others⁵.

² R. Tresna. 1993. *Komentar HIR*. Pradya Paramita. Jakarta. p. 142.

³ H. Salim HS dan H. Abdullah. 2007. *Perancangan Kontrak dan MOU*. Sinar Grafika. Jakarta. p. 101.

⁴ Wawan Tunggal Alam. 2001. *Hukum Bicara Kasus-Kasus dalam Kehidupan Sehari-hari*. Milenia Populer. Jakarta. p. 85.

⁵ Tan Thong Kie. 2007. *Studi Notariat dan Serba Serbi Praktek Notaris*. Ichtiar Baru Van Hoeve. Jakarta. p. 499.

The notary recognizes to confronts constituents on the basis of the resident documents presented to confronts. The Population Document shown to Notary in the case of making an Authentic Deed is:

1. Electronic Identity Card;
2. Certificate of Substitution of Identity Card, for the Applicant whose Electronic Identity Card is still in the process of making;
3. Limited Stay Permit Card, for foreign citizens;
4. Passport, for foreign citizens or Indonesian citizens.

But in the case of making a Notary Deed also requires other resident documents, among others :

1. Deed of Marriage, if relating to Joint Treasure requiring the consent of the married couple;
2. Information Not Married, if the confront has not been bound by marriage under applicable law;
3. Family Card, when it comes to common property or inheritance;
4. Deed of Death, when it comes to common property or inheritance.

Attention identity is important in a notarial deed. part of the deed contains the identity of the constituents and information about their position of acting commonly referred to as the comparition. Based on Article 38 Paragraph (3) sub-paragraph a of Notary Law, the composition contains:

1. Full Name;
2. Place and date of birth;
3. Work;
4. Position;
5. Ranking;
6. The residence of the constituents and/or the person they represent.

The Population Document shown is the original Population Document, not a photocopy. Notary at the time of making the Deed is responsible for what is before confront from seeing, hearing, accepting and adjusting the evidences submitted to confront.

The most widely used residence document is the Identity Card, but in fact a person may have more than one identity card even those who fabricate the Identity Card are not only fake Citizen Identification Card but other population documents are also many are forged and at the time of mistake one party is harmed the Notary will be held accountable. In fact, if analyzed further, Notary not as a party in the Deed, Notary only formulate the wishes of the constituents for his actions poured into the form of Notary Deed. Notary notes only record what is confronted by the confront with no obligation to investigate materially what confronted by notary. This is in line with the juridical character of a Notary, pursuant to the Decision of the Supreme Court of the Republic of Indonesia dated September 5, 1973 Number 702K/Sip/1973. Notary functions only record or write down what is desired and put forward by the parties facing the Notary. There is no obligation for a Notary to investigate matters or matters expressed by the respondents before the Notary.

Although a Notary has no material obligation in respect of matters raised before him, but a Notary in the performance of his obligations must use the precautionary principle, as set forth in Article 16 Paragraph (1) Subparagraph a of Notary Law, in the performance of his Notary shall be obligated to act as trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties concerned in legal action. If a Notary has performed its obligations pursuant to the Act, after viewing the original residence document or identity, the Notary shall not be liable to the material truth of the resident document or identity.

However, if the Notary is found to violate the limits of the law, the notary may be held responsible for administrative liability, civil liability or criminal liability.

Administrative Responsibility:-

Currently the existence of Notary has been regulated in Law Number 2 Year 2014 About the amendment to Law Number 30 Year 2004 About Position Notary. Article 16 Paragraph (1) Sub-Paragraph a of the Notary Law is stipulated that one of the obligations of a Notary in performing confront position is acting in a trustworthy, honest, thorough, independent, impartial manner and safeguarding the interests of related parties in legal action.

In the event that the Deed made by a Notary is found to be in violation of such limitations or fulfill the formulation of the violation mentioned in the Notary Law, the Notary may also be subject to administrative sanctions as set forth in Article 85 of Notary Law, such sanctions may be :

1. Verbal reprimands;

2. Written warning;
3. Temporary stop;
4. Dismiss with respect;
5. Dismissal with disrespect.

Civil Liability:-

The accountability of a notary publicly to the Deed made, it can be said that the deed made by the Notary in relation to civil affairs concerning the engagement made by 2 (two) parties or more, although it is possible made unilaterally. Notary as a public official authorized to make an Authentic Deed, in the event of a mistake whether intentionally or unintentionally causes harm, that is, the Notary has committed an unlawful act. An act is categorized as unlawful if such action⁶:

1. Violates the rights of others;
2. Contrary to the rule of law;
3. Contrary to decency;
4. Contrary to the propriety in observing the self-interest and property of others in the interaction of everyday life.

If a Notary commits an act of violating the law and the notary's mistake can be proven, the Notary shall be liable to sanctions in the form of indemnity, as provided for in Article 84 of Notary Law. Article 84 of the Notary's Office Law stipulates that an act of violation committed by a Notary which causes the Deed to have only a substantiation force under the hand or void by law may be the reason for the loss sufferer to demand the reimbursement of fees, compensation and interest to a Notary.

Thus, if one of the constituents uses incorrect population data which may result in the Deed having only a verification power as a Deed under the hand, the Notary shall be held personally liable in the form of reimbursement of costs or compensation. However, before being sanctioned by a Notary it must be proven to have committed against the law and proven to cause harm to the confronters or the parties.

Criminal Responsibility:-

Criminal in this case is a criminal act committed by a Notary in his capacity as a General Officer authorized to make an Authentic Deed, not in the context of an individual as a citizen in general. The elements in the criminal act include:

1. Deeds (human);
2. The fulfillment of the formulation in the Act, meaning the validity of the principle of legality, *nullum delictum nulla poena sine praevia lege poenali* (no act is prohibited and threatened with crime if it is not or has not been declared in law);
3. Unlawful;
4. Responsibility of Notary pursuant to the Law of Notary Position;
5. Responsibility of Notary in performing duties of office based on the Notary Code of Conduct. it is stipulated in Article 4 of the Notary Position Law concerning the oath of Notary's office.

A Notary may be held criminally liable in the case of making a deed based on false information and any rules relating to it:

1. Article 263 Paragraph (1) of the Criminal Code;
2. Article 264 Paragraph (1) of the Criminal Code;
3. Article 266 Paragraph (1) of the Criminal Code;
4. Article 55 Paragraph (1) of the Criminal Code;
5. Article 378 of the Criminal Code.

Criminal liability to Deed made on the basis of false citizenship documents is strictly regulated in the Criminal Code, but the criminal liability of a Notary is not stipulated in the Law of Notary Public. The criminal liability of a Notary should be regulated in a Notary Public Official Law because currently many Notaries are reported with alleged offenses.

⁶ M. Nur Rasaid. 2005. *Hukum Acara Perdata*. Sinar Grafika. Jakarta. p. 35.

Legal consequences of improper use of population data:-

Population data in the residence document is a reference notary in performing services to the public as a public official assigned to represent the state in the making of authentic deed⁷. The problem that then arises is the more easily the document is falsified, so the greater the likelihood of notaries being dragged into legal cases. If the respondent judges or assumes that the notarial deed violates the provisions of the laws and regulations, the parties who provide the judgment prove it through the judicial process.

If the violation can be proven then the deed with the judicial process can be declared as a deed under the hand. If it has been domiciled like that then the value of proof is left to the judge, whether to keep the parties binding with the evidentiary power as a deed under the hand or has not binding the parties by way of canceled or null and void.

Thus, the legal consequences of the deed to the incorrect population data are:

1. A deed that has the power of proof as a deed under the hand;
2. Deed can be canceled;
3. Deed is null and void.

A deed that has the power of proof as a deed under the hand:-

A deed which only has the power of proof as a deed under the hand relates to the value of evidence of an evidence. Deed under the hand has the power of proof as long as the contents and signatures contained therein are recognized by the parties. if either party denies such a thing then the value of the proof is submitted to the judge.

Article 39 Paragraph (2) of the Notary Public Law stipulates that the interrogator must be known by a notary or introduced to confront by 2 (two) witnesses who are at least 18 (eighteen) years old or have married and are capable of legal action or introduced by 2 (two) other apparatuses and Article 41 of the Notary Law stipulates that violation of the provisions referred to in Article 38, Article 39 and Article 40 resulted in the deed only having evidentiary power as a deed under the hand.

Therefore, if the Notary is proven to violate the limitation of Article 39 of Notary Law, the deed shall only have evidentiary power as a deed under the hand. As a result of a Deed which has the power of proof as a deed under the hands may be the reason for the party suffering losses to demand reimbursement of fees, compensation and interest to the Notary.

In the case of violation of Article 39 of Notary Position Law can be proven, the deed with judicial process can be stated as a deed under the hand. If it has been placed like that then the value of proof is left to the judge.

Deed is canceled:-

Deed may be canceled if it contains defect of will, so if in the beginning of deed especially requirement of the parties don't meet subjective requirement hence upon request of one side of the deed can be canceled. The subjective requirement involves agreeing to those who bind themselves and are proficient in making a covenant. Deed remains binding on the parties concerned as long as there is no court decision that has permanent legal powers stating that the deed becomes invalid and non-binding.

Article 1320 of the Civil Code affirms that for the validity of an agreement it takes 4 (four) terms, that is⁸:

1. Agree to those who commit themselves;
2. Proficient to make an appointment;
3. About a certain thing;
4. A cause of that thing.

The word agreement is an absolute element in order for the formation of a treaty and is a subjective requirement for the validity of the agreement as regulated in Article 1320 of the Civil Code. Whereas article 1321 of the Civil Code regulates the agreement to be invalid if it contains a defect of will, if :

1. Coercion;
2. There is an Oversight;

⁷ Sjaifurrachman. 2011. *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Mandar Maju. Bandung. p.26.

⁸ Subekti. 2002. *Hukum Perjanjian*. Intermedia. Jakarta. p. 17.

3. The existence of fraud.

If it is associated with the falsified population data then in this case fraud occurs. Fraud occurs when one of the parties intentionally provides falsified or incorrect statements. It is also provided for in Article 1449 of the Civil Code which affirms that contracts made by coercion, oversight or fraud, issue a demand to annul it.

Notary's Deed is void by law:-

Notary deeds that don't meet the objective requirements of the agreement may become null and void. Canceled by law resulted in legal deed in deed considered never happened. The objective requirement of the covenant is about a certain matter and a lawful cause.

The requirement of a permissible cause, the word permitted herein not for the purpose of contrasting with the word is prohibited in Islamic law, but the meaning herein is that the contents of the treaty can't be contrary to the law, morality and public order⁹.

So if the notary makes an agreement based on the falsified population data then it is contrary to one of the legitimate requirements of the agreement is the fourth condition, a lawful cause. So the deed is not made with a lawful cause, resulting in the deed is null and void. It is also affirmed in Article 1335 of the Civil Code that provides that a covenant without cause or which has been made for a false or forbidden cause has no legal force.

Conclusions:-

The responsibility of the Notary to the demographic data of the constituents is limited to formal truth, so that the Notary can't be held accountable for the misuse of the population data if the Notary has exercised its authority under the laws and regulations. However, a Notary may be held liable if negligent or intentionally makes Deed based on incorrect population data, such liability may be civil liability, criminal liability and administrative responsibility.

The consequences of a law dealing with the improper use of population data are degraded into a deed that only has the power of proof as a deed under the hand if it can be proven in the judicial process. And if the deed has become a deed under hand then the value of verification shall be submitted to the judge, whether the deed is still a deed under hand, canceled or null and void.

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⁹ Ahmadi Miru dan Sakka Pati. 2014. *Hukum Perikatan Penjelasan Makna Pasal 1233 sampai 1456 BW*. Rajawali Pers. Jakarta. p. 69.