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### RESEARCH ARTICLE

#### NOTARY LIABILITY FOR CLIENT DOCUMENTS PROVEN TO BE FAKE DUE TO CARELESSNESS

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#### Abstract

Notary is required to be responsible for the deed he has made. Sometimes, deeds made before a notary contain fake documents, fraud and even untruth and are often subject to articles 263, 264, 266 in conjunction with Article 55 of the Criminal Code. The task of a notary is to record data and information provided by clients in accordance with the obligations of a notary in Law Number 2 of 2014 concerning the office of a notary, article 16, article 1 letter (f). The Notary Office Law does not specifically regulate legal protection for notaries in the examination process regarding forgery of client documents. For this reason, the criminal liability of a notary for a deed made on the basis of a forged document as a result of not applying the precautionary principle needs to be studied and analyzed. This can be started by ensuring and checking the formal correctness of the client if it is considered lacking. Supposedly, notaries seek material truth in order to achieve the goal of the precautionary principle in knowing clients and minimizing the possibility of problems occurring in the future.

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#### Introduction:-

The presence of Notary is desired by the rule of law with the intention of helping and serving the public who need authentic written evidence regarding circumstances, events or legal actions. On this basis, those who are appointed as Notaries must have a passion to serve the community. For this service, people who feel served by a Notary in accordance with their duties and positions can give an honorarium to a Notary. Therefore, a Notary means nothing if the community does not need it [1].

In connection with the exercise of his authority regarding the making of deeds, a Notary must always act carefully. The notary must examine the relevant facts related to his considerations which are based on the laws and regulations that apply and are binding on him. Notaries are required to examine matters relating to completeness, validity, as well as matters used as evidence and documents brought or submitted to the Notary. He must also hear the statements or statements of the parties who appear before him. This is an obligation as a basis for consideration to later be stated in the deed that will be made. If the Notary is not careful in examining important facts related to this matter, then the Notary can be said to be careless in carrying out his duties and authorities [2].

Regarding the documents brought or submitted by the parties to the Notary, the Notary in carrying out a legal action is required to recognize the parties in order to prevent identity falsification. Thus, the principle of caution is needed. The notary is obliged to examine all documents brought by the parties as a basis for consideration to be included in

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the deed. The documents brought by the parties to be investigated first include land certificates, grant deeds, KTP (Resident Identity Card), as well as statements or statements from clients.

There is a Notary who pays little attention or does not carefully examine documents provided by clients in carrying out their profession. In fact, he tends to make it easier for clients to draw up the necessary certificates, such as the example of the case of falsifying authentic certificates in Decision Number 996/Pid.B/2020/PN.Plg. A notary employee makes a deed of agreement and distribution of joint assets without involving the notary concerned. In this case, the Notary became a witness in his statement. The notary never issued the deed.

The fact is that there are notaries who act only as clerks. As a Notary, his behavior is inconsistent with what is stipulated in the Law on Notary Office and the Notary Code of Ethics. The use of documents or statements that are not in accordance with the truth by client parties in making authentic deeds is indeed not a new right. This clearly has serious consequences; it can even have an impact on the cancellation of the deed. The case in the Karawang Court Decision Number 382/Pid.b/2019/PN Kwg below can be used as an example. Someone enters a false statement in the Sale and Purchase Deed. This causes the Notary who made the deed to be summoned to be a witness in court for the deed he has made. This can be detrimental to the parties to the agreement, even the Notary as the party who made the deed. Professionalism in carrying out the duties and authority of a Notary needs to be increased to guarantee the truth of the deed. The precautionary principle in notary practice is very important, especially in matters relating to the process of making authentic deeds by a notary. This is motivated by the existence of legal problems that occur related to authentic deed.

Another court decision related to the criminal case of forgery of other authentic deeds is the Cilacap District Court Decision case Number 44/Pid.B/2021/PN Clp. The defendant works as a Notary and PPAT with the Cilacap Regency Working Area, where the duties and responsibilities of the defendant's job are to make authentic deeds. The defendant had forged letters on the authentic deed he made. The actions of the Defendant are regulated and punishable under Article 264 Paragraph (1) 1st of the Criminal Code).

Taking into account the examples of the cases above, the Notary must pay attention to the precautionary principle in knowing service users. Notaries in carrying out their duties and positions in making deed are not free from errors or mistakes either caused by unprofessional behavior or in favor of one of the parties so that problems occur in the deed he made.

As a public official authorized to make authentic deeds, notaries often act carelessly which can lead to legal problems, both in the realm of criminal law and the realm of civil law. This is because the parties making the authentic deed provide fake documents or provide false statements to the notary; causing legal problems with the authentic deed he made [3].

Therefore, to maintain and protect the position of a Notary, the principle of recognizing service users needs to be carried out by a Notary as stipulated in Permenkumham 9 of 2017 concerning Application of the Principle of Recognizing Service Users for Notaries. This is intended so that in making the deed there is no mistake. Therefore, the Notary must ensure that the client uses the original identity and documents that are correct in the deed that will be made so that later it does not cause legal problems. The notary deed must provide assurance that an event and fact mentioned in the deed was actually carried out by a notary or explained by the client parties listed in the deed in accordance with the procedures specified in making the deed.

Based on the background above, the formulation of the problem raised in this study is the notary's criminal liability for falsification of documents as a result of not applying the precautionary principle.

### **ResearchMethod:-**

This research was conducted using a normative juridical design (normative legal research). The object of research is the Library Study of Primary Legal Materials, namely Law Number 2 of 2014 concerning the Position of Notary Public, and the Criminal Code. Secondary legal material is in the form of literature related to the object of research, such as books written by jurists, doctrines, opinions and teachings from jurists, legal journals, scientific papers, and material from the internet. Tertiary legal material is in the form of a dictionary to understand words that are unclear in legal terms or other terms. The qualitative analysis used is perspective, that is, it will try to provide existing data

and evaluate it. Then, the problems related to the implementation of notary accountability are analyzed. Solutions to overcome these problems are also provided.

### **Results and Discussion:-**

#### **Notary criminal liability for document falsification, as a result of not applying the precautionary principle Policy**

Public Law (Criminal Law) is the law that regulates what actions are prohibited and which gives punishment to those who violate them. This law also regulates how to bring cases before the court [4]. The conception that places guilt as a determining factor for criminal liability can also be found in the common law system which enforces the Latin maxim: "actus non est reus, nisi mens sit rea". Wilson interprets the Latin maxim as: "an act is not criminal in the absence of a guilty mind. That is, an act cannot be said to be criminal if there is no evil will in it. Meanwhile, Kadish and Paulsen interpret it as: "an unwarrantable act without a vicious will is no crime at all". That is, a behavior cannot be said to be a crime without evil will [5].

There is criminal liability if the legal subject makes a mistake, or is known as an adage. Conversely, there is no crime without guilt. Errors can be intentional (dolus) or negligence (culpa). If a Notary carries out his/her duties in accordance with statutory regulations, he/she will not be punished because it is in accordance with the principle "cannot be punished if there is no mistake"/"actus non facit reum nisi mens sit rea". It is impossible for a Notary to be sentenced to a criminal sentence if there is no mistake [6].

The criminal responsibility of a Notary for the deed he made is not regulated in the Amendment Law on UUJN. However, criminal responsibility of a Notary is imposed if the Notary commits a criminal act. The notary concerned cannot be held accountable, because the notary only records what was conveyed by the parties to be included in the deed. False statements submitted by the parties that are poured into the deed are the responsibility of the parties [7]. In other words, what a Notary can be responsible for is if the deception or deception originates from the Notary himself [8].

The principle of prudence is one of the most important principles that must be applied or carried out by a Notary in carrying out his position. Notary is an honorable position of trust and in carrying out his position he is required to be thorough or careful. All of this is regulated in the Law on Notary Office and the Notary Code of Ethics, which must always be consistent in implementing laws and regulations in the notary sector based on professionalism and good faith.

If there is a notarial deed that is disputed by the parties or other third parties, the notary is often used as a party that participates in committing or assisting in committing a crime, namely making or providing false information in a notary deed [9]. The above aspects are very closely related to the actions of a Notary who violated Article 15 of the Amendment Law on UUJN and the existence of the precautionary principle. The bottom line is that a Notary who does not comply with the provisions of this article will make him a perpetrator of forgery or falsifying the deed as referred to in Articles 263, 264 and 266 of the Criminal Code. Thus, his actions can cause harm to interested parties.

A notary against a deed drawn up before him, regarding the aspects mentioned above, can lead to criminal acts of forgery. He is considered to have forged a notarial deed if in reality he did not read and explain the deed before the client witnessed by witnesses if the objective elements (elements of the nature of the unlawful act are formal) conveyed in the forgery articles referred to, and subjective elements (elements of the nature of the act against the law) material law). This includes provable criminal guilt and liability.

Examination of violations committed by a notary must be carried out. A holistic-integral examination is carried out by looking at the external, formal and material aspects of the Notary's deed, as well as the implementation of the duties of a Notary's position related to the Notary's authority. Thus, in addition to being based on legal rules governing acts of violation committed by a Notary, Notary practice also needs to be integrated with reality. This means that those who will examine the Notary must be able to prove a major error committed by the Notary intellectually, in this case the logical (legal) strength needed in examining the Notary.

The definition of counterfeiting in relation to Articles 263, 264 and 266 of the Criminal Code can be explained as follows:

1. Article 263 paragraph (1) of the Criminal Code which contains two types of prohibited acts, namely:

- a. Making a fake letter is composing a letter or writing in its entirety. This letter was made fake which aims to show that the letter seems to have come from someone other than the author (perpetrator). This is called material falsification (*materiele valsheid*). The origin of the letter is fake but the letter also contains something different, or other than what is actually supposed to be contained. Simply put, the letter contained inaccurate content that was not there in the first place. The act of making a fake letter is also said to be intellectual forgery (*Intelectuele Valsheid*) because the contents are contrary to the truth. Forged letters can include falsification of signatures as well as the content of writing or letters. This act falsely depicts that the letter, both in its entirety and signature or its contents, comes from a person whose name is listed under the writing (material forgery).
- b. Forging a letter is an act committed by making unauthorized changes (without the rightful permission) in a letter or writing. Changes which can be about the signature as well as about the content, regardless of whether this was previously something that is not true or something that is true. Changing the contents from incorrect to true is a forgery of letters. The change can consist of:
  1. deletion of sentences, words, numbers, signatures;
  2. addition with one sentence, word or number;
  3. replacement of sentences, words, numbers, dates, and/or signatures. The act of change causes a change in appearance as well as in its contents and its original purpose. Thus the act of changing it disrupts the original letter or writing.
1. Article 264 paragraph (1) 1 of the Criminal Code is an aggravating provision of Article 263 paragraph (1) of the Criminal Code because the act of forgery was committed on an authentic deed. This shows as if there was already an authentic deed, so that forgery consists only of forging letters. Meanwhile, the act of impersonation (making fake letters) is not included in it.

Based on the understanding of the forgery article, the following cases show the actions of a notary when associated with article 15 of the Amendment Law on the UUJN:

- a. Article 263 paragraph (1) of the Criminal Code: In court decision Number: 996/Pid.B/2020/PN.Plg.
- b. There is a Notary employee who conspires with the client to make a deed by falsifying the Notary's signature and has recorded it in a special book without the Notary's knowledge. Furthermore, the deed notary employee is given to the client to be signed by the parties. Then, the deed was used to the Bank to guarantee debts and there was suspicion from the Bank. So, the Bank asked whether the deed was actually made by the Notary concerned because there was suspicion in the language used. After being examined by further investigators, the Notary has never issued and has never signed the deed.
- c. b) Article 264 paragraph (1) of the Criminal Code: In Court Decision Number: 382/Pid.B/2019/PN Kwg, the Notary and the witness deliver the documents in the form of warkah to the Notary which according to the Notary it is customary to submit a Blank sale and purchase deed along the warkah it has been fully received. Then, other people who have nothing to do with the deed are ordered to enter False Statements in the authentic deed.

Taking into account the examples of these problems, there are violations of Article 15 of the Amendment Law on the UUJN. Nptaris does not pay attention to the precautionary principle. Of course, a notary must also be seen from the side of the subject (perpetrator). When a notary's actions in making an authentic deed do not comply with these provisions, the person concerned does not automatically commit a criminal act. It must be seen to what extent the Notary's involvement is by conducting in-depth research so that legal facts emerge, bearing in mind that criminal acts are provisions regulated in public law (KUHP) by looking for elements of error, intentionality, and negligence.

Deliberation is an act that is realized, understood and known as such, so that there is no element of misunderstanding or misunderstanding. Meanwhile, the meaning of negligence is the occurrence of an act because it was never thought at all that there would be a consequence caused by not paying attention to it. This happened due to a lack of caution and the action was contrary to its obligations. A notary, who acts intentionally, planned in bad faith and is aware of harming clients. This is something that is very rare to find even though it may be the case for sure there is. Thus, in this case one form of error is ignorance and/or misunderstanding or negligence of the Notary concerned.

In Article 16 letter a UUJN, Notaries are required to act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions. If these provisions are violated, especially by entering false information into an authentic deed, then in that phase the Notary can be made a suspect. The next phase is if the deed made by the notary is proven to have been wrong or intentional due to evil will. In this phase, the Notary concerned can be used as a defendant. If the court through the Panel of Judges can prove legally and convincingly

that the Notary is proven guilty legally and convincingly, then that phase, the notary has become a convict through a court decision that has permanent legal force.

How is the notary said to be guilty, like the case example above, related to how the notary's responsibility is? Criminally, the notary must be responsible for making the deed. Limitations of notary acts that can be punished include:

1. There is a legal action taken by a notary against the formal aspects of the intentional deed. That is, these actions are full of awareness and conviction and are planned. Deed made before a notary or by a notary, the client together with agreed to be used as a basis for committing a crime.
2. There is legal action from a notary in making a deed before or by a notary which, if measured based on UUJN, is not in accordance with UUJN.
3. According to the competent authority, the said action is inappropriate; the institution in question is the Notary Supervisory Board.

Imposition of criminal sanctions against Notaries can be carried out as long as these limits are violated. This means that in addition to fulfilling the formulation of violations stated in the Amendment Law on UUJN and the code of ethics for office, a Notary must also fulfill the formulation stated in the Criminal Code. Violations or acts against the law committed by a Notary fulfill the formulation of a crime. However, if it turns out that this is based on the Amendment Law on UUJN, then it is a violation. The notary concerned cannot be sentenced to a criminal sentence, because the criterion for assessing a deed must be based on the Amendment Law on the UUJN and the code of ethics for the position of a Notary.

The notary is said to be innocent, that the notary is proven to have committed a crime or the crime of forgery regulated in the Criminal Code, as long as the notary can prove that in carrying out his position the notary is guided by UUJN, paying attention to the rules, conditions and composition of the deed. The notarial deed must be drawn up in the minutes of the deed; in the original it is stored as a notary protocol. The denial must always be proven by the theory of proof of deed, where there are three theories of proof of deed.

Outward proof is the strength of proof in which the deed can prove its authenticity. From an outward appearance, the deed has followed the requirements to become an authentic deed. In making an authentic deed, Article 38 of Law Number 02 of 2014 concerning the Position of Notary regarding the composition of the deed starting from the beginning of the deed, the body of the deed to the end of the deed must be seen. The authentic deed may not be in a different form from UUJN. Outwardly, the deed or the minutes of the deed contain the signatures of the parties, witnesses and notary, and the copy of the deed must match the minutes of the deed exactly. This proof must be through a lawsuit to the court and the plaintiff must be able to prove that outwardly the deed is not an authentic deed or a notarial deed.

In formal proof, the notary's deed must provide certainty that the parties have really approached the notary. The incident was actually carried out by a notary or explained to the parties about the deed by a notary. Formally to prove the date, month, year, when facing a Notary, the parties appear before the Notary, provide signatures and initials, witness and Notary. All parties prove what was witnessed, heard and seen by the Notary or recorded statements or statements of the parties.

If the formal aspect is disputed by the parties, then the parties must be able to prove the formality of the deed. The parties must be able to prove the untruth of the date, month, year and time of appearance, prove the untruth of what the Notary saw, heard and witnessed. The parties may deny the formalities of the deed if they feel that they have indeed been harmed by the deed. In this case it is clear that the formal aspect was not carried out by the Notary because the minutes of the deed were not made.

Material proof is certainty about the material of the deed, because the deed is valid evidence against the party who made the deed. The material or content of the deed is the intent and purpose of the parties. If in the statement the parties deny it, then the material of the deed must be proven later. If the deed is a statement from a Notary, for example an official deed containing information from a Notary, then the parties must be able to prove that the statement from the Notary is not true and must be proven.

These three aspects are the perfection of the Notary's deed to become an authentic deed. The meaning of the authentic deed itself in Article 1868 of the Civil Code must be seen. Anyone who is bound by the deed can prove in court proceedings, that in making it did not use one of these aspects, maybe even all three of them were not used in making an authentic deed. The evidentiary value can be assessed from several decisions in criminal cases or civil cases that are in accordance with these three aspects.

Knowledge, Integrity and Professionalism are things that a Notary must have. Notaries must understand all legal actions on matters desired by clients. Notaries must have the ability and knowledge in the field of law. When the notary does not understand the legal actions that the client wants, then the notary does not understand the knowledge that must be possessed. If the Notary has the ability in terms of the legal actions desired by the client, this minimizes the risk of losses and disputes that will be experienced by the client or the Notary himself.

Notaries and parties can avoid all risks, both in the form of sanctions and cancellation of authentic deeds. So, in the process of making authentic deeds before a notary, the Notary and the parties must carry out the precautionary principle in a more thorough manner and have good faith in making authentic deeds and comply with applicable legal provisions and be based on morals and ethics.

### **Conclusion:-**

Based on the results of the research and discussion as described above, it can be concluded as follows. If the notary's criminal responsibility is in the absence of criminal sanctions in the UUJN, the arrangements regarding sanctions against notaries will be less than perfect. It is important to include criminal sanctions in UUJN besides making it a corridor in carrying out its authority; criminal sanctions are also preventive in nature before a crime occurs. Criminal sanctions in the UUJN are also very important so that the law is effective and can uphold justice for the people who are harmed as a result of the authentic deed made by a Notary. In terms of carrying out his position orders, Notaries are required to be thorough and careful. In the case of a money laundering crime, a Notary may unconsciously be involved as an actor who participates in assisting in committing a money laundering crime. Notaries can be subject to Article 3 UUTPPU for being careless. A notary can also be subject to Article 5 UUTPPU if in fact he already knows that the transaction carried out by his client is an indication of a Money Laundering Crime. However, the Notary continues to provide services by making a forum for his client with the help of the deed he made.

### **Suggestion:-**

The researcher suggests the need for Notary accountability for the actions he has committed, which so far is based on the Criminal Code. Criminal liability regarding the position of a Notary is directly related to the Deed made as a product of the duties of a Notary's position or authority. Notaries need to pay more attention to the rules related to procedures or procedures for making these products, namely those contained in UUJN. The Criminal Code which is used as a rule to impose criminal penalties on Notaries related to the Deed products they made shows a misinterpretation of the position of Notary and Notary Deeds which are evidence in the practice of Civil Law. Notaries in carrying out their duties and positions are very important to carry out the prudence principle in the process of making Authentic Deeds, bearing in mind that legal problems often occur with Authentic Deeds made by Notaries because there are parties who commit crimes such as providing false information in the Deed. made by a notary. The forms of prudence principle that should be carried out by a Notary in the process of making a deed, namely, identifying the client's identity, carefully verifying the client's subject and object data, giving a grace period in carrying out the deed, acting carefully, carefully and careful in the process of making the deed, fulfilling all the technical requirements for making the deed and reporting if there are indications of money laundering in transactions at the Notary.

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