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RESEARCH ARTICLE

THE IMPLEMENTATION OF THE PRINCIPLE OF RECOGNIZING SERVICE USERS AND CRIMINAL LIABILITY OF NOTARY WHO DOES NOT PERFORM THE PRINCIPLE OF RECOGNIZING SERVICE USERS

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Abstract

The notary's responsibility in carrying out his/her position relating to the principle of prudence in terms of identifying service users who commit criminal acts of document forgery is very important. The notary must first recognize the identity of the confronter by examining and paying attention to the original documents shown by the confronter. One of the documents is the Identity Card (KTP), or other documents that constitute formal identity. In relation to criminal offenses, notaries must be more careful in carrying out their positions, especially in recognizing service users. If the confronters have fulfilled all the formal requirements, these requirements are sufficient as a basis for the Notary to perform the legal actions desired by the confronters. Notaries are not burdened to seek material truth. However, when there are doubts about the documents required for the deed, the notary should seek the material truth of the documents. If there are doubts and errors in the documents brought by the confronters, the Notary should refuse to make an authentic deed, to achieve the principle of prudence in recognizing the confronters and to avoid disputes in the future.

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Introduction:-

Notary is a public official who has the authority to make authentic deeds. Notaries in carrying out their duties have moral responsibility for their duties. Violation of the office of a notary will ultimately lead to liability for him, both administrative liability and civil compensation. Furthermore, a notary can be criminally liable if he violates criminal provisions in carrying out his duties and office [1].

Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, or based on other laws. To ensure certainty, order, and legal protection, written evidence is needed that is authentic regarding actions, agreements, stipulations and legal events made in front of or by authorized officials. Notaries are public officials authorized to make authentic deeds to the extent that the making of certain authentic deeds is not reserved for other public officials. The making of authentic deeds is required by laws and regulations in order to create certainty, order, and legal protection [2].

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An authentic deed essentially contains the formal truth according to what the parties have told the notary. The notary has an obligation to include that what is contained in the notarial deed has really been understood and in accordance with the will of the parties, namely by reading it out, so that the contents of the notarial deed become clear, and can provide access to information, including access to relevant laws and regulations for the parties signing the deed. Thus, the parties can determine freely to agree or disagree with the contents of the notarial deed to be signed. Article 38 Paragraph (3) letter c of Law Number 2 Year 2014 concerning Notary Position (UUJN) emphasizes that the content of the deed is the will and desire of the confronters who come to the Notary. Thus, the content of the deed is the will or desire of the confronters themselves, not the will or desire of the notary. The notary only frames it in the form of a notarial deed in accordance with UUJN.

However, despite the honesty, thoroughness and impartiality of the notary, forged documents and false statements from the confronters still pose a problem and threat to the notary. Although the notary is not responsible for the forged documents and false statements made by the confronters, however, this can still be detrimental to the notary. In fact, it is not impossible for this to become a criminal loophole for the Notary. When a dispute occurs, the notary will be called and questioned as a witness. A lot of time and material losses are spent by the notary. This is an interesting topic to study, especially regarding the impact on the notary concerned of the forged documents and false statements provided by the confronters, which then refers to the importance for the Notary in applying the precautionary principle in recognizing the confronters [3].

There are various cases relating to the forgery of authentic deeds. One example is in the East Jakarta District Court in Decision Number 291/Pid.B/2020/PN.Jkt.Tim, which has been finalized. This is an example of a case of forgery of authentic deeds. The defendant is Mochamad Ansor as a notary public together with the witness Topo Topik Alias Taufik (separate case file), on a day and date that can no longer be remembered in 2012 until 2013, at the defendant's house at Kaliabang Ilir street RT. 008 /RW. 007 Pejuang Medan village, Satria District, Bekasi city and at the house of the witness Topo Topik Alias Taufik, Gang Urus Sari Rt.013 Rw.001 Utan Kayu Selatan village, Matraman District East Jakarta within the jurisdiction of the East Jakarta District Court which is authorized to examine and try it. He intentionally made a false letter or falsified a letter that could give rise to a right, obligation or release of debt, or which was intended as evidence of a matter with the intention of using or causing others to use the letter as if the contents were true and not false, which was carried out against an authentic deed. The actions of the Defendant are regulated and punishable in violation of Article 264 Paragraph (1) to 1 Jo Article 55 Paragraph (1) to 1 of the Criminal Code.

The defendant was brought before the court under alternative charges, namely: first, violating Article 264 Paragraph (1) Jo Article 55 Paragraph (1) 1 of the Criminal Code or; second, violating Article 263 Paragraph (1) Jo Article 55 Paragraph (1) 1 of the Criminal Code. Because the defendant was threatened and charged with Alternative charges, the Panel of Judges was free to choose and consider which charges were imposed on the Defendant. This is related to the facts revealed in front of the trial obtained from the testimony of the Witnesses and the Statement of the Defendant which is associated with the evidence presented before the trial.

Based on the facts revealed before the trial, the Panel of Judges considered the First Indictment, namely violating Article 264 Paragraph (1) to 1 Jo Article 55 paragraph (1) to 1 of the Criminal Code, the elements of which are as follows:

1. Any person who with deliberate intent forges or falsifies a document which may give rise to a right, an obligation or a release from debt, or which is intended as evidence of any matter, with intent to use or to cause others to use such document as if the contents were true and not forged, shall be guilty of an authentic deed;
2. As a person who commits, who orders to commit and who participates in the act.

Based on the background of the problem above, the problem formulations in this study are: 1) how is the material application of the principle of recognizing service users for notaries in their positions? 2) How is the criminal liability of notaries who do not carry out the principle of recognizing service users?

Method:-

This research was prepared using normative juridical research, which is research focused on examining the application of rules or norms in positive law [4]. The approach method used in this research is the statute approach, and conceptual approach. The data needed to be used in this research is secondary data; Primary legal materials include a statutory approach which is carried out by studying the consistency of conformity between Law of the

Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries, the 2015 Code of Ethics of the Notary Association, East Jakarta District Court Decision Number 291/Pid.B/2020/PN.Jkt.Tim, Yogyakarta High Court Decision Number 126/PDT/2018/PT YYK. Secondary legal materials include library materials in the field of legal science, research results in the field of law and scientific articles, journals and the internet. The literature data collection method is a method carried out by researchers by collecting a number of books, documents, laws and regulations, scientific works and other literature. The legal materials obtained were analyzed qualitatively.

Results and Discussion:-

Material application of the principle of recognizing service users for Notaries in their positions

One of the officials whose role is to help create legal certainty and protection for the community is the notary, because the notary is in the realm of preventing legal problems through the authentic deed he makes, which serves as the most perfect evidence in court. An authentic deed made by a notary can guarantee legal certainty and clearly determine the rights and obligations of the parties. Authentic deeds made by notaries as public officials are valid, strongest and fullest evidence and have an important role in every legal relationship in people's lives [5].

The confronters should have fulfilled all the formal requirements. These requirements are sufficient basis for the notary to perform the legal acts desired by the confronters. The notary is not burdened to seek material truth, but when there are doubts about the documents that are a requirement for making the deed, the notary should seek material truth about the documents. If there are doubts and errors about the documents brought by the confronters, the notary should refuse to make an authentic deed to achieve the principle of prudence in recognizing the confronters and not causing disputes in the future.

The interests of the parties in the notarial deed will be hampered if the notary does not apply the precautionary principle in carrying out his/her position. Not only does it apply as a deed under the hand, an authentic deed made by a Notary who overrides the principle of prudence will result in the enactment of criminal law against the notary concerned in the event that false information is found in the authentic deed made by the Notary concerned [6].

The application of the precautionary principle in terms of recognizing the identity of the face is carried out by examining and paying attention to the original documents shown by the parties facing. One of them is the Identity Card (KTP), or other documents that constitute the formal identity of a person. The function of the Notary in examining the identity of the confronting party which is related to the duties and authority of the notary based on the UUJN is that the Notary must ensure that the identity of the confronting party has fulfilled the requirements for making an authentic deed based on Article 39 and Article 40 of the UUJN by introducing the confronting party, ensuring the truth (validity) of the confronting party's identity, and making an authentic deed based on the UUJN.

Notaries as public officials in carrying out their official duties must be based on applicable laws and regulations because notarial deeds as deeds made by or in the presence of Notaries as public officials have formal evidentiary and material evidentiary power towards the establishment of the precautionary principle, so as not to become a dispute in the future. The principle of prudence indicates that a deed made by a Notary must fulfill two requirements, namely the formal and material validity of an authentic deed. Both requirements are cumulative, not alternative. If one of these conditions is not met, then the deed does not have the power of notarization and results in the deed made by the notary being invalid.

Liability of notary who does not apply the principle of recognizing service users

Notary's criminal and civil law liability for forged documents is also a result of not applying the precautionary principle. The principle of prudence is one of the most important principles that must be applied or practiced by notaries in carrying out their positions. Notary is an honorable position of trust and in carrying out his office is required to be thorough or careful. All of this is regulated in the Notary Position Law and the Notary Code of Ethics, which must always be consistent in implementing the laws and regulations in the field of notaries based on professionalism and good faith. The challenge to carry out the office properly and professionally is increasingly important, because the position of Notary is directly dealing with the interests of the community in providing assistance or services. There is no reason whatsoever for a Notary not to apply the precautionary principle in carrying out his/her office and he/she is obliged to uphold the precautionary principle. This implies that all deeds

and actions made in the context of making authentic deeds must always be based on the applicable laws and regulations so that they can be legally accountable [7].

Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary regulates that when a Notary in carrying out his/her official duties is proven to have committed a violation, the Notary may be subject to or sanctioned, in the form of civil, administrative, and Code of Ethics sanctions. These sanctions have been regulated in such a way in the Notary Position Law and the Notary Position Code of Ethics, but there is no article that regulates the existence of criminal sanctions against Notaries, so that in practice in the field there are many facts that a legal action or violation committed by a Notary can actually be subject to criminal, civil, administrative and Notary Position Code of Ethics sanctions. If these aspects can be proven in the trial at the Notary Supervisory Council, then these aspects can be used as the basis for imposing administrative sanctions and civil sanctions against notaries. On the other hand, these aspects can also be used as a basis for criminalizing a notary on the basis that the notary has made a false letter or falsified a deed with the qualification of a criminal act committed by a notary [8].

The problem of criminal law in the practice of notarial is caused by the lack of caution of notaries in making authentic deeds of the parties' data related to the subject or object brought by the parties to make an authentic deed. Thus, it causes frequent crimes such as false documents or false statements made by the parties in the authentic deed made by the Notary [9].

Notary's criminal and civil law liability for forged documents is also related to the non-application of the precautionary principle. Notary as a public official carries out noble duties and helps the public solve the legal problems they face. He is required to always act carefully, cautiously, and in order to prevent the possibility of falsification of documents by interested parties. Notaries who do not apply the principle of prudence in recognizing the parties, due to their lack of prudence in the deeds they make, may be subject to administrative sanctions in the form of written warnings, temporary dismissal, honorable dismissal or dishonorable dismissal in accordance with the Notary Position Law.

Notaries who commit unlawful acts must be held accountable for their actions. A notary is criminally liable when the notary is proven to have committed a criminal offense in the form of errors. Meanwhile, civil liability for a notary is sanctioned in the form of reimbursement of costs or compensation to the injured party for unlawful acts by the Notary.

Conclusion:-

The principle of prudence or examination of documents brought by the parties in making an authentic deed must be applied. Notary as a public official has the power of formal proof and material proof of the enforcement of the precautionary principle, so as not to become a dispute in the future. The principle of prudence means that the deed made by the Notary must fulfill two conditions, namely the formal and material validity of the authentic deed. Both requirements are cumulative, not alternative. If one of these conditions is not met, then the deed does not have evidentiary power and results in the deed made by the notary being invalid.

Notaries who do not apply the principle of knowing the service user due to their lack of caution towards the deeds they make may be subject to administrative sanctions of written warning, temporary dismissal, honorable dismissal or dishonorable dismissal in accordance with the Notary Position Law. Notaries who commit unlawful acts are obliged to take responsibility for their actions when in the process of proof it is found that the Notary is proven to have committed a criminal offense in the form of errors. Civilly, unlawful acts are sanctioned in the form of reimbursement of costs or compensation to the injured party.

Suggestion:-

Notaries should be more thorough and careful in checking documents in order to avoid document forgery and avoid other unwanted things that can harm the good name of the notary. In addition to damaging the good name of the notary, the party who carries out the crime can be subject to criminal sanctions.

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