

Legal Protection for Notaries in Related Criminal Justice Proceedings in the Making of Deeds

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Abstract

The purpose of writing was to find out about legal protection for Notaries in the implementation of criminal justice processes related to deeds that have been made by Notaries. The research method used was normative juridical, which is conducting an assessment based on the provisions of the applicable laws and regulations. The result of the study was that legal protection for Notaries was primarily provided in Article 66 of the UUJN with the establishment of the Notary Honorary Council (MKN), the aim of which was to provide maximum legal contribution to Notaries in carrying out their duties, and to receive protection as a member of the Indonesian Notary Association (INI). The obstacle in its implementation was that the implementing regulations for the UUJN have not yet been formed, causing there to be articles that provide multiple interpretations in their implementation. In addition, INI's role was still lacking in conducting outreach to the community.

Keywords: *Legal Protection, Notary, Deed.*

INTRODUCTION

Notary is a general official who carries out the profession of providing legal services to people who need or need the protection of law (Rudi,2020). Therefore, there is a guarantee for the realization of legal certainty. The Unitary State of the Republic of Indonesia is a state of law in accordance with Pancasila and the 1945 Constitution, in which it has guaranteed certainty and legal protection for each of its citizens. In this position has the meaning that notaries have their own characteristics that distinguish from other positions in the community. The existence of notaries is very important in people's lives.

Notary is said to be a public position because the government as a general power that appoints and dismisses it, and the government authorizes to perform services to the public in some things that have been mandated, therefore notaries are said to participate in the government's territory (Soesanto,2012). The function

of the state must be able to provide good service to its people, one of which is through the existence of the office.

Notary provisions were originally regulated in Law No. 30 of 2004 on Notary Positions, but have been changed to Law No. 2 of 2014 on Notary Positions, hereinafter referred to as UUJN. The most important authority of the notary is to make an authentic deed, it has been regulated in Article 1 number (1) of the Notary Office Law. Notaries as general officials are the only officials who have the authority to make authentic deeds. In Article 1868 of the Civil Code whereas the beginning of the existence of public officials, giving an understanding of authentic deeds and general officials, which is authentic deeds are deeds made in the form that has been stipulated by the Law before the general office who has authority over the making of the deed. In the Law, it has been explained that there are three elements that are important to the existence of authentic deeds, namely:

1. Authentic deed form must be determined by law
2. Made in front of the general office
3. The deed is made within the territory of the office of authority

Therefore, the deed is the most powerful tool of evidence in civil based on existing legal regulations, so there must be a general official who is given the task by the Law to make the authentic deed (Sjaifurrachman and Habib, 2011).

Subekti explained that the deed letter is a letter of writing that is solely made to be evidence of something or event, therefore the deed must be signed (Subekti, 1984). According to Sudikno, the deed is a signed letter in which there are events that form the basis of a right or alliance made to be proof (Sudikno, 1998). Therefore, notary deeds can be used for proof in legal disputes to be a reminder of events that have occurred, so it is said to be in the interest of giving evidence (Notodisoerjo, 1982).

Article 15 paragraphs (1), (2), and (3) of UUJN, Notary has the authority to make authentic deeds as follows:

1. Notary has the authority to make authentic deeds about deeds, agreements, determinations required by the law desired by parties who have interests, providing guarantees after storing deeds.
2. Notaries also have the authority to certify signatures, give certainty of the date of the letter under the hand, and others.
3. In addition, notaries also have other authorities that have been regulated by the Law.

Authentic deeds made by Notaries will greatly benefit people who need deeds such as deeds of establishment of PT, deeds of will, power of attorney, and many more. With the notary is to answer the needs of the community to provide legal certainty to the engagement it implements.

Authentic deeds become the most powerful evidence because of their binding and perfect nature for the parties and parties who get the rights of the

parties. Binding and perfect in authentic deeds has meaning if submitted to meet the requirements formal and materil and the evidence provided by the defendant does not reduce its existence, will be attached to provide strong evidence. Therefore, the truth of the content and all forms of statements in the deed is perfect and binding on the party. In the event of a dispute or dispute, the judge is obliged to make the deed as the most correct thing to take the decision of the dispute that occurred (Sasauw, 2015).

Notary in carrying out his position must have a professional attitude based on a good personality and in carrying out all his duties and authorities must be based on all existing laws and regulations, and obliged to always uphold the notary professional code of ethics. Notary code of ethics is a person who has more knowledge in the field of notary, and is able to meet the needs of the community, in it has explained the methods that must be obeyed by notaries. For someone who is a passer-by, it will be punished.

In Article 16 letter a UUJN has also been explained that notaries must take honest, neutral actions that do not side with any party, then the notary must also have a sense of sensitivity and be able to analyze the various cases present in order to be able to take the most appropriate action in accordance with existing regulations through the making of his deed and refuse to make deeds that are contrary to existing laws. The public desperately needs a notary who is reliable and trustworthy, because each signature provides guarantees and becomes the strongest evidence if in the future there are unwanted things such as disputes or disputes.

In carrying out its duties when making deeds, notaries have responsibility for the deeds that have been made. This relates to the duties of the notary personally or as a general official. The responsibility is as follows: (Enggawita, 2021).

1. Civil liability for the deeds that have been made. In this case, the responsibility for the material truth of the deed, in PMH or unlawful acts either actively that gives harm to others, and passively does not carry out actions where the action is a necessity, to cause the other party to get losses. This is stipulated in Article 1365 of the Civil Code.
2. Criminal liability for the deeds that have been made. In this case, it is a criminal act that he has committed as a general official who has the authority to make a deed. As a result, notaries have the right to participate in those who have committed criminal acts and account for the deeds that have been done in front of the court.
3. Administrative responsibility for the deeds that have been made. In UUJN, it is mentioned that there are five administrative sanctions if the notary violates what has been regulated by the Law, namely reprimand, warning, temporarily dismissed, dismissed, dismissed disrespectfully.

The notary Authentic Deed has the most perfect power in civil lawsuits, but if there is a violation, the original perfect evidentiary value will turn into the power of evidence as an under-hand deed, or null and void that is able to give damages to the parties therein and must pay compensation to the party receiving the loss.

Notaries also sometimes make mistakes in making deeds. If this can be proven, the deed will lose its authenticity and be null and void or can be canceled. If the error provides losses for the parties who have an interest in it, notaries can be prosecuted up civilly even to criminally. Sanctions can also be given to notaries, namely criminal sanctions in the form of criminal penalties, and civil sanctions in the form of indemnifying parties who have an interest (Kie,20 07).

Problems regarding authentic deeds can occur as a result of errors, omissions, carelessness and inaccuracy committed by the Notary itself. As a result of the error, making the deed that has been made becomes null and void. With the mistakes he has made, the notary is obliged to be held legally accountable through the regulations stipulated in Law No. 2 of 2014 concerning the Notary Department. In addition to notary responsibilities, of course, notaries also need to get legal protection in carrying out their duties.

Because, the problem is precisely present from a third party, but the notary is involved because it is a party that participates in carrying out prohibited criminal acts, in this case helping to give false information or statements into the deeds he made (Habib, 2008). Notaries are considered together with parties or opponents to make deeds whose purpose is only to benefit one of the opponents only and give harm to other opponents and must be proven to correct it before the authorities in this case, namely the Court.

One of the cases that occurred with the above problems is the case in the Supreme Court Decision No. 110 / Pid.B / 2018 / PN Pwd. The case occurred in Purwodadi, regarding the criminal act of falsifying a certificate in lieu of electronic ID cards with the name Sarmini along with KK and electronic ID card with the name Rita Rosida. The defendant was named Masrukan as a motorcycle salesperson at one of the PT. The case began in 2017, when Kumaidi wanted to buy a motorcycle and told Masrukan, "the money wasn't enough." Kumaidi asked Masrukan to borrow money to his PT, but Kumaidi did not have an ID card until asking Masrukan for help to be made but under the name Sarmidi. Then Masrukan made a fake letter in his office. After making a palsy letter, Masrukan came to Notary Maria Nova, to ask to be made a fiduciary guarantee deed and provide a file that is a fake document of KTP and KK replacement letter. Until finally, the case was followed up by the authorities and Masrukan received a criminal sanction in the form of imprisonment. In this case, the notary is involved in the examination process for allegedly making false letters and helping to commit prohibited criminal acts.

Based on the background described above, the author is interested in reviewing the Legal Protection for Notaries in Criminal Justice Proceedings Related to The Making of Deeds.

RESEARCH METHOD

The method used in this research is a normative juridical research method, where the method is to conduct research using literature materials or secondary data that already exists. In this case there are several books and journals, as well as laws and regulations such as civil code, Law No. 2 of 2014 concerning the Notary Department.

DISCUSS AND ANALYSIS

Legal protection for Notaries in criminal justice proceedings related to deeds made in accordance with UUJN

Law is a whole set of rules or regulations, and all behavior that applies in living together and in implementing it can be penalized. If it is associated with legal protection means a guarantee or certainty that people will get protection for their interests. Moreover, the State of Indonesia is a state of law that certainly upholds human rights to its people.

Philip said his characteristic is to prioritize human rights by putting forward the principle of harmony between the government and its people, for example resolving disputes by means of deliberation and the court is the last resort, because in the water of human rights is a balance of rights and obligations (Hadjon, 2007). The concept is the root of Pancasila as the basis of the state, where the protection of the law is the focus of human rights guarantees and prioritizes the government based on actions on the Law. So, in order to achieve the legal product is important as a form of protection. Then, it is also in need of an active role from law enforcement to perform all tasks to the maximum in accordance with the regulations that have been set and in carrying it out do not cut down choose.

Law No. 2 of 2014 concerning The Notary Department is a legal product to provide legal certainty and protection to notaries in carrying out the profession to make authentic deeds. Basically, the authentic deed contains formal truths that are in accordance with those that have been told to the Notary. Notary has the obligation to apply everything that is already in the notary deed and has understood and in accordance with the wishes of the party who has an interest, how to read the deed, with it the contents of the deed become clear and understood by the parties who have an interest. So, the party is allowed to agree or disagree with the contents of the deed that has been made(Kunni, 2007).

Law No. 2 of 2014 concerning the Notary Department has regulated the form of legal protection against notaries, namely regarding the obligation of denial and the right of denial of Notaries stipulated in Article 4 paragraph 2 and Article 16 paragraph 1 letter f and Article 54. Habib in his book describes the right of denial as the obligation of notary denial. One of the notary promises is notary will guarantee the confidential contents of the deed that has been made.

When a notary testifies, it is not permissible to give a deed in part or in whole to the other party in accordance with Article 54 because the notary is obliged to keep everything secret. In addition, other protection lies in fingerprinting the minuta deed stipulated by Article 16 paragraph (1). Therefore, the task of the Notary Supervisory Assembly supervises when conducting file checks making minuta deeds. With the presence of sari fingerprints, making the more powerful the evidence. In other words, the fingerprints give power regarding the evidence. It is also a legal protection against notaries.

Legal protection against Notaries is most importantly provided in Article 66 of UUJN with the establishment of a Notary Honorary Assembly (MKN) consisting of seven members, namely representatives of Notaries, governments, academics. The existence of MKN is expected to make a maximum legal contribution to the notary in carrying out its duties, and mkn becomes legal protection against notaries that are quite optimal because the institution is independent, namely not being a sub-section of the government and in exercising its authority mkn should not be affected by other parties and the decision is considered final in other words is inviolable.

Article 1 number 1 of Kemenkumham Regulation No. 7 of 2016, explains the Notary Honorary Assembly which has the authority to conduct notary construction and is obliged to give the word agree or not for the purposes of the investigation. In the process of proving if there is an allegation that a notary is involved in making a mistake on the deed made, it is mandatory to obtain a word of consent from the Notary Honorary Assembly. Article 66 paragraph 1 of UUJN describes the matter of the judicial process, conducting investigations, public prosecutors and judges with the approval of the Notary Honorary Assembly. The reason explains about institutions that are allowed to take minuta deeds. However, judges are only allowed to take photocopies of the minuta deed. Because in Article 16 paragraph (1) letter b UUJN, notary must make a deed of minuta form and do storage as part of the Notary Protocol, this is for the authenticity of the deed can be maintained. In Article 54 of the UUJN, who can see the deed only people who have interests, heirs or people who get rights (but this is still multi-interpretation). The police as a person who gets the right also cannot arbitrarily see the deed, must be based on the word agreed from mkn (Heriyanti,2016).

In accordance with Article 66 letter a, the MKN strongly provides protection to notaries because of their function to check and give words agree or disagree. The notary summoning process by the judge must get a word of consent from the MKN if there are allegations that notaries make mistakes. The examination is in accordance with Article 70 letter a, namely conducting a hearing to conduct an examination there are allegations of violating the rules carried out by notaries. After that it is made in the form of a decree that gives the word agree or disagree to the judge.

Protection for notaries as members of the Indonesian Notary Association. The organization regarding notaries has been in Article 82 of UUJN, the legal protection given to its members is committed to the value of togetherness in carrying out their profession and maintaining the dignity of notaries as public officials. The purpose of this organization is to guarantee protection against notaries. The organization also cooperates with police agencies with memorandum of understanding Number: 01/MoU/PP-INI/V/2006, in which it is explained about fostering and improving the sense of professionalism where it becomes legal protection against notaries. The note is a procedure that must be carried out if the notary will be called by the police. In addition, the legal protection provided by the Indonesian Notary Association is to provide assistance and provide legal assistance to notaries during the MKN session. With the assistance, it realizes a sense of calmness and legal protection against notaries.

Other protections are also shown from supervision for the practice of the Notary profession. Enforcing the law must be implemented with the inclusion of a surveillance system so that no abuses are committed. In article 66 of the latest UUJN, removed the word with consent, it makes the Indonesian Notary Association and the Notary Honorary Assembly can oversee more intensively for notaries. Legal protection is a very important thing and must be given to all citizens, including notaries. The point is to maintain the dignity of the office, when being a witness and carrying out the examination process and trial, keeping the deed secret to safeguard the interests of the parties, maintaining the minuta deed and notary protocol in storing it.

In carrying out his duties and authorities, the Notary also has a responsibility in making authentic deeds that he made. Notaries are also obliged to be responsible if proven to have done wrong or negligent conducted intentionally against the deed made. However, on the contrary, if the wrong element occurs not to the Notary but to the impediment, and as long as the Notary exercised his authority in accordance with the rules of the applicable law, the Notary cannot be held accountable, because it only records everything submitted by the opponent to be written in the deed, in other words the incorrect information disclosed by the parties is the responsibility of the party itself is not the responsibility of the Notary (Enggarwati,2016). In doing the proof, as explained above, the judge when making the summons notary must get a word of consent from the Notary Honorary Assembly.

In essence, the Notary has no responsibility for the content of the deed he made because the content is the wish of the requesting party, so it can be said that the Notary only has responsibility for the formal form of his authentic deed as described in the UUJN. The role of notary only to mutilate, has no obligation to conduct an investigation of the truth of the material content disclosed by the party for the authentic deed. Therefore, notaries are required to have a neutral attitude and not side with any party.

Notary as a general official who has the task of making authentic deeds, if in the future proven to be wrong and provide harm to others, then the Notary is considered to have committed PMH or Unlawful Acts. If the error of the Notary can be proven, it can be sanctioned as described by Article 84 of UUJN. The parties may ask for compensation and interest on the Notary who made the mistake. In accordance with Article 41 of UUJN, civil sanctions are established, namely if the PMH is proven then the deed only has evidence as a deed under the hands. As a result, parties who have an interest can conduct prosecutions regarding compensation costs, compensation and interest in the Notary.

Related to the case in the Supreme Court Decision No. 110 / Pid.B / 2018 / PN Pwd related to the falsification of letters by Defendant Masrukan and involving Notary Maria Nova as the creator of the fisudia guarantee deed. In such cases only Masrukan who get criminal sanctions, legal protection is given to Notary Maria Nova as the deed maker because in this case the notary only carries out his authority in accordance with what the requested by the interceptor is made an authentic deed, then the Notary only conducts a proof of truth examination of the file given by the impediment. In this case, Notary Maria Nova was found not guilty by the judge and did not get any sanctions because as a Notary, Maria only exercised her authority according to UUJN. Notary Maria Nova gets legal protection in accordance with what has been described above and regulated in Law No. 2 of 2014 concerning The Notary Office, namely protection from INI, MKN, and various articles that have been regulated in the Law. When it has gone through the mechanism of examination of the code of ethics in the MPD, and it is agreed by the Court that the Notary is proven to do PMH, then the notary can be criminally sentenced.

Obstacles that occur in implementing legal protection for Notaries

Notary in carrying out his duties and authority also allows to have problems with the law, it is expected that a notary carries out his duties and authority as best as possible and must be careful and in accordance with the provisions set by the Law, because notary also allows to make mistakes. The notary must be prepared if it is deemed to have any involvement with a legal matter, the result of the legal product it makes in this case is an authentic deed. With this, it can bring notaries to the examination conducted by law enforcement officials. Legal products in the form of deeds made are a means of proof for notaries.

With the new UUJN, Law No. 2 of 2014 which replaces Law No. 30 of 2004, the authority to give approval to examine notaries for judicial purposes is given to the Notary Honorary Assembly (MKN). However, in fact, with the UUJN Change does not mean there are no obstacles in implementing it.

The obstacles that occur in its implementation are not yet formed UUJN Implementing Regulation Changes. The obstacle in this factor is that the regulation has not been formed as mandated by Article 91 of UUJN, causing the

investigation procedure for notaries still referring to the old UUJN. Then, in UUJN Changes there are also articles that provide multi-interpretation in its implementation, it can happen because there are no implementation regulations yet formed. For example, in the case of fingerprints regulated by Article 16 paragraph 1, in fact Notary clients such as banks feel restless, so hope for a clearer provision on the matter.

Another obstacle that exists is the lack of the role of the Indonesian Notary Association (INI) organization in carrying out socialization about the existence of a new UUJN. Socialization activities are the main thing because with these activities make people understand about the existing rules, especially with the rules that have been updated by the new law. Considering that the old UUJN has been changed to a new one starting from 2014, the understanding of the new UUJN should have been inherent in the community. However, in fact, the role of this organization in carrying out socialization to this is still felt less, especially in certain areas in Indonesia.

Therefore, with some obstacles as described above, there needs to be efforts to reduce and overcome these obstacles. The government should immediately act to establish the UUJN Implementing Regulation so that it no longer makes multi-interpretation for the parties in it, namely notaries and clients. Then the role of INI, namely as an organization that provides legal protection to Notaries needs to be improved again, and more active in carrying out socialization in order to provide understanding for the people of Indonesia.

CLOSURE

Conclusion

Legal protection of notaries is most importantly given in Article 66 of notary law profession with the establishment of the Notary Honorary Assembly, the purpose of making a maximum legal contribution to the notary in carrying out its duties, and the MKN being the legal protection of notaries is optimal enough because the institution is independent and in exercising its authority should not be affected by other parties and its decisions cannot be inviolable. In addition, protection for notaries as members of the Indonesian Notary Association as described in Article 82 of UUJN, namely committed to the value of togetherness in carrying out their profession and maintaining the dignity of notaries as general officials. The purpose of this organization is to guarantee protection against notaries. The notary also has responsibility for the deeds he made and if proven to have made a mistake can also be penalized.

Suggestion

It is necessary to form the implementation regulations of UUJN Changes causing there are articles that provide multi-interpretation in their implementation. In addition, there is still a lack of this role in socializing to the community.

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