Legal Implications of Accuracy Principles Negligence in Making Deed

Thea Farina[1], Sudarsono[2], A. Rahmad Budiono[3], Iwan Permadi[4]

Faculty of Law, Brawijaya University, Malang,
INDONESIA.

ABSTRACT

A notary in making authentic deed is required to always hold on to the Law No. 2 of 2014 and Act No. 30 of 2004 concerning about Notary position and Notary Code. The parameter used to analyze the error of the Notary is: the act contains elements of deceit; misrepresentation; concealment of facts; manipulation, breach of trust; subterfuge or illegal circumvention. Notary obligation has been dealt with specifically and in detail in Article 16 (1) letter a-n. Further sanctions provisions in Law No. 2 in 2014 and No. 30 of 2004 concerning about Notary stipulated in article 16, paragraph (11), (12), (13). Article 16, paragraph (11), Article 38 paragraph (4) states that the violations committed by the notary of the provisions referred to in Article 16 paragraph (1) letter j, which resulted in a deed only has the strength of evidence as a deed under hand or a deed became null and void may be the reason for the party who suffered a loss to claim reimbursement of expenses, damages and interest to the notary. Viewed from the standpoint of time, supervisory control can be divided into a priori and a posteriori control. The invitation notary as a witness, then improved as a defendant in a civil court concerning accountability deed made to be used as evidence before the tolerance of Notary Supervisory Council, then followed up with a punishment that can be used as a notary witnesses and suspects in criminal cases and the seizure of stored minuta bundles which is saved by Notary.

Keywords: legal implications, Deed Preparation, Accuracy Principle

INTRODUCTION

Notary as a Public official, in providing services to the community in the field of civil law are required to always hold on to the Law No. 2 of 2014 and Act No. 30 of 2004 concerning Notary and Notary Code. In practice, it is not always the case. It can be found in certain legal proceedings that resulted in a Notary charged with crimes related to the authentic document that has been made. It certainly can lead to some problems that are not good for the profession of notary in the public eye.

The debate whether the error is within the scope of the notary public administrative law, civil or criminal law lies in whether the action parameter contains elements of deceit; misrepresentation; concealment of facts; manipulation, breach of trust; subterfuge or illegal circumvention. This will help if a legal relationship contains elements of nature against the law in criminal law (wederechtelijkheid) or "wanprestatie" or is "onrechtmatige daad" nuanced relationship in the form of civil or administrative legal discretion in.

If these parameters are met then the aspect of criminal law will stand out, besides of course the element of nature against the law and other criminal liability as described above, which includes:

1. Fulfillment of formulation criminal act element formally and materially containing inappropriate elements and disapproval of society;
2. The element of intent (dolus);
3. Elements of negligence (culpa lata);
4. Element of responsibility abilities;

ISSN: 2223-9944, eISSN: 2223-9553

5. Absence of justification or excuse both formal and substantive.

If the parameter is not proven, then there are 2 (two) possibilities: the first is negligence as a result of lack of knowledge, lack of experience or lack of skills (malpractice) or "wanprestatie" (failure to perform an obligation), or unlawful acts (onrechtmatige daad) (1365 Book of the Criminal Justice Act) or unlawful administrative discretion. The act of "negligence" due to lack of knowledge, lack of skills or lack of experience can lead to criminal prosecution only if the element of negligence or negligence (culpa) is formulated as an action element. If the element is not listed as a result are not criminal sanctions in the area of administrative, ethical or civil sanctions; Secondly, if the above parameters are met, then the notary deed has met the elements of the criminal law, because all the above parameters nuanced evil intent (dolus malus) and raises tort (wederrechtelijkheid) in criminal law.

The first problem concerns whether the notary in the case of making an authentic deed will understand well the value and the consequences of the deed, the deed before finally declared legally flawed in practice that would make the Notary deed made tend to assume certificate is valid if the parties have agreed , and each party's legal capacity. According to Koeswadji, notary can be caused by a lack of knowledge of *onvoldoende Kennis*, lack of experience *of onvoldoende ervaring* and lack of understanding of *onvoldoende Inzicht*.

The absence of justification or excuse either formal or material, in criminal law, an excuse is a reason that deleting the wrong done. Surely that was done was against the law, but the error is forgiven, so in that case there is no mistake that resulted in perpetrators to be held accountable. Justification or legal excuse both formal and substantive law have different properties. "The nature against formal law and punishable if the act defined as an offense in law. Abolishment of the nature of the law against this notion is just based on a statutory provision[1]". Simons as this Saxon follower argues that: "to be punished, an act must be formulation of the offense in the legislation". Unlawful nature of the material is not only because it is against the law, but also contrary to the unwritten law, or the norms of life in the community. "Termination of nature against the law according to this understanding, in addition to under the law can also be based on unwritten rules[2]".

Acts of the notary can raise legal problems and empties into the cases both civil and criminal court in advance, due to things that are vague. One word or a clause in an authentic deed can lead to criminal or civil cases, and these problems arise due to lack of accurate, inaccurate, hasty impressed considering the number of certificates that must be completed and be on time as promised to clients and lack of professional notary which makes the deed.

IMPLICATIONS FOR ACCURACY NEGLIGENCE OF LEGAL PRINCIPLES IN MAKING DEED

Notary tends to deal with law. Not only because of internal factors originating from within itself such as carelessness, does not comply with the procedure, do not run the professional ethics and so on. But also due to external factors such as a public notary’s morals which are faced with false documents has become a document-when the document contains the legal consequences for the owner.

In Law No. 2 in 2014 and No. 30 of 2004 concerning Notary arranged that when the notary in performing his duties has violated that cause deviations from the law notary may be subject to disciplinary sanctions in the form of Civil, Administrative / Notary Code. The sanctions have been arranged so that both previously and now the Notary Law related professional Notary Code where the lack of information but rather criminal sanctions Assembly watchdog organization that authority Notary give punishment to the notary.

ISSN: 2223-9944, eISSN: 2223-9553

Thus concluded that although in the Law No. 2 in 2014 and No. 30 of 2004 concerning Notary does not mention the existence of criminal sanctions but a legal action against the violations committed by the Notary inviting elements of falsification of the intention / negligence in the manufacture of a letter / authentic document that describe its contents false then after being sanctioned administrative / professional ethics office of notary and civil penalties can then be withdrawn and be qualified as a criminal offense committed by a notary who explains there is evidence of involvement intentionally committing a crime of counterfeiting authentic deed[2].

Criminal law is part of public law that put pressure on the public interest in the community. According to the doctrine of the existence of criminal responsibility should be the fulfillment of a condition is to see the acts that are punishable by mentioning explicitly the elements and based on the laws that govern that such actions have been contrary to the criminal law that constitute crimes, which must take into-accounted for why consequences of such actions[1].

In matters relating to the Notary has been regulated in a special law ie Act No. 2 in 2014 and No. 30 of 2004 concerning Notary Code of Ethics relating to the profession, and there is a Notary Supervisory Council which serves to oversee the duties and authority of the notary, ruled out the application of criminal sanctions to be limited to the Notary. Because it is the application of the law of Act No. 2 in 2014 and No. 30 of 2004 concerning Notary with the application of criminal law set forth in the (Book of the Criminal Justice Act) to overlap so as to provide for a notary legal ambiguity in case of errors in the act on tasks and authority.

Actually, criminal sanctions can be applied if there is evidence of a violation of law that links the criminal act as an alternative to the inside of a lawsuit settlement. Because the criminal sanction is Remedium ultimum, which becomes the last drug, if sanctions or measures in other branches of law does not work. Therefore, its use should be limited.

With the onset of the case / cases of this kind, it will cause the notary to be in and out of the courthouse to account for the deed that has been made, given the notary is a public official who is authorized to make authentic act which was made after it is signed by the parties and become a State Document.

The existence of the law contained in the association as a whole social life that comes from religious norms, social norms, and norms that develop in people's lives. Law is governed on how people should behave, as well as the social life of the state. Relationship governed by the rule of law is called legal relationship or legal events, with the creation of a legal relationship that realization of order in society that creates a legal order.

Law is directed solely as a means to support the construction, to create or make welfare for the society. Indonesia as State based on law aims to realize a just and prosperous society, responsible for protecting the people, maintain order and security.

Legal aspects of the implementation of the system is the basis of the field of national economic activity that is essentially based on the legal basis of Article 33 of the Constitution of 1945, the consequence is the Right of the State to regulate the national economy, and the rights derived from the basic law (Law 1945). With fair certainty and fairness and legal certainty must then be able to guarantee the freedom of the law regularly in the dynamics of the economy which in turn will bring together well-being in the society. Without legal certainty, the economy cannot grow and orderly, without justice the economy will not grow healthy freedom and justice and welfare. At the end, the law must be brought to life with a prosperous and peaceful life together.

The role of law in economic development is to protect, manage and plan the economic life of the dynamics of economic activity so that it can be directed to the progress and prosperity for

ISSN: 2223-9944, eISSN: 2223-9553

the whole community. Economics and business law sufficient to support economic development, since through the law of economics and business communities formed or directed to achieve economic development goals (law as a tool of social engineering). Instead, economics and business law are not sufficient to create an obstacle to economic development.

Since the 1998 reform to convince us to make corrections in the various concepts, methods and practices of the organization of national life, which most observers believed to play a major role in contributing to the economic crisis. The paradigm of good governance has become a trend in the world. Yet, the paradigm becomes a prerequisite for any country that entered the era of globalization of economy and industry, and technology.

Notary obligation has been dealt with specifically and in detail in Article 16 (1) letter late. Further sanctions provisions in Law No. 2 in 2014 and No. 30 of 2004 concerning Notary stipulated in article 16, paragraph (11), (12), (3). Article 16, paragraph (11), Article 38 paragraph (4) states that the violations committed by the notary of the provisions referred to in Article 16 paragraph (1) letter j, which resulted in a deed only has the strength of evidence as a deed under hand or a deed became null and void may be the reason for the party who suffered a loss to claim reimbursement of expenses, damages and interest to the notary. Provisions of these Articles is a provision which indicates that the notary formally responsible for the validity of the authentic deed made and if it turns out there are legal disability so that the deed otentitasnya loss and harm the interested parties, the notary may be required to reimburse the cost of damages and interest.

Regarding the sanctions imposed on the notary as a person under Article 7, Article 9, Article 16, paragraph 1 letter a-i, article 17, article 19, article 32, article 37, article 54, subsequent Act No. 2 in 2014 and No. 30 of 2004 concerning Notary can be:

a. Verbal warning;
b. Certain warning;
c. Temporary termination;
d. Honorable discharge;
e. Dishonorable discharge

These sanctions can be awarded if the notary violates the conditions stipulated by the subsequent Act No. 2 in 2014 and No. 30 of 2004 concerning on Notary. From the norm, this set the notary to notary in their profession is always controlled by the formalities that have been outlined. This means that the demands of the profession of notary refer to the shape of the resulting deed not the substance (matter) of the deed. Material certificates and responsibility for the contents rests with the contracting party. Sometimes in a deed containing certain legal constructions are actually forbidden to be done in the field of contract law. On this, the notary is obliged to remind or inform the parties that action contrary to applicable law.

Material responsibility of the deed made before a notary public also needs to be emphasized that the authority of the notary in a notarial deed not mean notaries can be freely at will to create authentic act in the absence of the parties who commissioned his deed. Thus, the actual notarial deed is deed the parties concerned, not the notary deed. That's why, in the dispute of the agreements contained in the notarial deed made to them before the notary and then the bound is they who hold the treaty itself, while the notary is not bound to fulfill any promises or obligations as stated in notarial deed made in front and notary at all is beyond those who are related parties.

ISSN: 2223-9944, eISSN: 2223-9553

When examined in depth, there was indeed a relationship between the code of ethics by Law No. 2 in 2014 and No. 30 of 2004 concerning Notary. The first relationship contained in Article 4 of Law No. 2 in 2014 and No. 30 of 2004 concerning Notary of the oath of office. Notary, through his oath promise to keep the attitude, behavior and will perform its obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a notary.

Law No. 2 in 2014 and No. 30 of 2004 concerning Notary and code of ethics requires that a notary public notary in performing his duties as a public official, in addition to be subject to the Act No. 2 in 2014 and No. 30 of 2004 concerning Notary also must adhere to the professional code of ethics and must be accountable to the communities it serves, professional organizations (Indonesian Notaries Association or INI) and the country. Sanctions as a form of enforcement for violations of the code of ethics notary is defined as a code of conduct that is intended as a means of punishment, efforts and means of coercion obedience and discipline notary.

Notarial acts in connection with the professionalism in providing services to the public, then surely a notary must not misuse the authority given to it under the Law No. 2 in 2014 and No. 30 of 2004 concerning Notary. A notary in performing daily duties are very sensitive to things which can drop the name and authority as a notary, even the actions performed by a notary in daily life can also drop dignity. Therefore, a notary must be able to maintain the good name and dignity, it is possible, because when things happen that could impose his authority as a notary would affect its day-to-day duties and in the Act is also possible for an inquiry and examination to be accountable by the authorities in overseeing all behavior.

To avoid the notary did a mistake that could lead to legal implications, the author uses the theory of control / supervision where, according to the theory of control / supervision of notaries should have control systems for control / monitoring is a benchmark to assess whether the act has been achieved or not, so it does not happen either mistake or unintentionally as precautions or also to fix what goes wrong. The purpose here is the success of preventive efforts notary supervision to fit with what is planned, even to achieve the set goals emphasized in the norm between the parties who are overseeing the supervised.

Direct supervision/control the notary here can be implemented by: (1) internal control that is control by itself notary office. For example, before a notary signature examine / supervise employees in the deed. This kind of control is classified as a type of technical control administration; (2) an external control is carried out supervisory agencies Indonesian Notaries Association) which is the official organization of notaries through the Supervisory Council of Regional (MPD) or Central Supervisory Council (MPP) which oversees notaries in their official duty. While direct control is performed by the reactive control of the judiciary, among others, criminal justice, civil justice.

Seen from the terms of Action Reviews, supervision time can be divided into: (1) the a priori control supervision that is done before action or approve the deed / deed, which has the task was a notary. Priori control contains preventive supervision to prevent avoid confusion. Sample before a notary deed marker must examine and be careful whether the deed actually contains the truth in the sense not mistaken; (2) the a posteriori control surveillance conducted after a certificate is issued. Supervision can also be called a repressive surveillance aimed to oversee mistake. Peradilal control performed lawsuit by those who feel aggrieved.

The supervisory control theory covers a variety of basic as the basis is:

1. Validity, that the parties conduct supervision and follow up the results of the surveillance law actually has the authority.

ISSN: 2223-9944, eISSN: 2223-9553

2. Supervisor based on a skill, successfully resuscitated an oversight on the recognition that supervised the expertise and mastery of the issues that are supervised.
3. Monitoring is done based trust, which means that the supervision must be clearly mekanism
4. The success of surveillance due to consciousness of law, which grows in man are thought to correspond to the truth values.

Therefore, it can be symbolized to prevent legal implications that make notary hit problems due to inaccurate is good supervision of the notary's own (internal control) as well as of the organization and of the judiciary (extenal control).

Actually, under the supervision of the Notary Law Notary better when compared with Stb. 1860 number 3 because supervision is done by 3 (three) different elements, but has a close connection with the notary, in the presence of these elements, the results obtained should be a comprehensive investigation, which ultimately lead to a positive effect in making decisions, besides that this oversight is certainly expected to be better with the division of these elements, whereas previously there was only one element only, namely from the District Court of the profession all are out of the organization Notary.

Supervision is carried out of some of these elements is good enough because the Regional Supervisory Council (MPD) refused to give consent for the police to be called first demonstrated the presence of a notary error through MPN which are final and binding. Although supervised by the Supervisory Council is a notary public, it does not mean necessary a Notary supervision of the elements alone. Element of a notary is needed because the practice is Notary knows itself. While the government required elements as well as the Notary's office related to the practice directly to the public (service users), in which the public should be protected by an institution that is government.

The legislation used by the underlying implementation notary duties meant that there is legal certainty in the actions / tasks assigned to the notary. In addition, provide and ensure a sense of legal certainty for the community members.

Notary Act given the trust to provide legal certainty for the community, so it can be said that the Notary office and duties based on the good faith of the Government and of the communities it serves.

Now Legal protection of Notary forth in Article 66 and Law No. 2 in 2014 and No. 30 of 2004 concerning Notary who establishes, that the judicial process, investigators, prosecutors, or judges with the approval of the Supervisory Council of the Regional authorities took photocopies of certificates minuta and or letters attached to the Protocol minuta Notary deed or in storage and call the Notary to be present in the examination relating to a deed made or Notary Protocols that are in storage. Notary legal protection to this, of course, can be considered to form the legislation that can provide protection and security to the notary law no longer with adannya Constitutional Court decision No. 49/2013 states that police investigators didak need permission from the Regional Supervisory Council (MPD) to examine if a Notary stuck with the case .

CONCLUSION

Notary plays an important role in the rule of law, good governance, because in addition to being included in the General Authorities as well as part of the state (state or government), as well as a Professional Notary included in the private sector (private or business). So, the need for adherence to the Notary Law, Notary Code of Ethics, Law and other related regulations.

ISSN: 2223-9944, eISSN: 2223-9553

Notary as a public authorized official can make an authentic deed must be accountable for the deed he made in the future if it turns out that the problem arises from the authentic deed. Problems arising from the deed of Notary questionable, whether due to the fault of the Notary or not the fault of the parties to provide information, documents required to be honest and complete Notary. Notary who makes authentic act referred to above even though he was not involved in the falsification of the information in an authentic deed can be done by calling the police investigators in his capacity as a witness in the matter. Administratively, the deed can be canceled and under arms. While the Act No. 2 of 2014 in conjunction with No. 30 of 2004 concerning Notary and Notary Code, can get reprimand, dismissal While, as well as Fixed Termination. In Civil, Notary may pay a fine, and / or pay interest as compensation. In Criminal, could be charged with Article 55, 56, 264, 263, 378, and 372 of the Criminal Code.

ACKNOWLEDGEMENTS

This article is dedicated to civitas academica of Brawijaya University. They have already contributed significantly to this article.

REFERENCES

[1] Diah Sulistyani Muladi, *Memahami Relevansi Notaris Dalam Supremasi Hukum, Good Governance dan Good Corporate Governance*, dalam medianotaris.com

[2] Purwaningsih, E. (2011). Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum. *dalam Jurnal Adil: Jurnal Hukum FH YARSI, 2*(3).

[3] Gunawan Widjaja dan Kartini Muljadi, (2002). *Seri Hukum Perikatan (Perikatan Yang Lahir Dari Undang-undang).* Jakarta: Rajawali Pers.

[4] Adjie, H. (2005). *Jurnal Renvoi,* Nomor 10-22 Tanggal 3 Maret hlm. 31

[5] Adjie, H. (2008). *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik.* Bandung: Refika Aditama.

[6] Majalah Renvoi Nomor 3.39.IV, Agustus, (2006).

[7] Ruba'i, M. (2001).*Asas-Asas Hukum Pidana*, Malang: UM Press bekerjasama dengan FH Unibraw.

[8] Muladi, (2002). *HAM Politik dan Sistem Peradilan Pidana*. Semarang: Badan Penerbit UNDIP.

[9] Muladi, (2011). "Hukum Pidana dan Profesi Jabatan Notaris." *Makalah disampaikan pada Diskusi Panel tentang Penegakkan Hukum Berkaitan dengan Pelaksanaan Tugas Jabatan Notaris, Fakultas Hukum Universitas Indonesia, Jakarta, 10 Desember 2011*

[10] Pengurus Pusat Ikatan Notaris Indonesia, (2008). *Jati Diri Notaris Indonesia Dulu, Sekarang dan di Masa Datang*, Jakarta: Gramedia Pustaka.

[11] Sjaifurrachman, (2011). *Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta*, Bandung: CV Mandar Maju.

[12] Alam, W. T. (2001). *Hukum Bicara Kasus-kasus dalam Kehidupan Sehari-hari,* Jakarta: Milenia Populer.

ISSN: 2223-9944, eISSN: 2223-9553