

The Responsibility of the Notary Regarding the Fulfillment of the Elements of Article 41 of the Notary Office Law

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Abstract

One of the authentic deeds is made by a notary, by the law on the position of a notary, namely law number UU No. 30 of 2004 concerning the position of a notary which was later amended by Law no. 2 of 2014 concerning amendments to Law no. 30 of 2004 concerning the Position of Notary (UUJN), hereinafter referred to as UUJN. The negligence of notaries is mostly their negligence, there are several cases regarding article 41 of the UUJN, both regarding article 38 regarding organs, for example, such as neglecting information regarding the position of acting in front of them which is not even contained, both a description of the signing and the place of signing. The purpose of this study is to find out and explain the position of the deed issued by a notary containing the elements of article 41 UUJN, to know and explain the responsibility of the notary to fulfill the elements of article 41 UUJN, and to find out and explain the role of the authorized institution in fulfilling the elements of article 41 UUJN. This study uses a juridical-normative approach, which examines secondary data by conducting a literature study. The research phase was carried out through library research and field research. Data collection techniques used are document studies and interviews to obtain primary data, which are used to support secondary data. The results obtained are that firstly, the position of a notary deed is very important in the law of proof in Indonesia. So the position of an authentic deed is a legal document and a perfect means of proof. Second, a notary's responsibilities as a public official include the notary profession's responsibilities relating to the deed, such as the Notary which is responsible for civil and criminal matters for the deed he made.

Keywords

Authentic Deed Position, Notary Responsibilities, Notary Case

1. Introduction

The making of the authentic deed is carried out by a notary, one of them, by the law on the position of a notary, namely law number (UU No.) 30 of 2004 concerning the position of a notary which was later amended by Law no. 2 of 2014 concerning amendments to Law no. 30 of 2004 concerning the Position of Notary (UUJN), hereinafter referred to as UUJN.

The position of Notary was born because the community needed an authentic deed, not a position that was deliberately created and then socialized to the public. This Notary position is not placed in the judicial, executive, or judicial institutions because the Notary is expected to have a neutral position. The position of a Notary is held or its presence is required by the rule of law to assist and serve the community who need authentic written evidence regarding legal circumstances, events, or actions.

A notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws, while a notarial deed in UUJN is a notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary, according to the form and procedure stipulated in this Law (UU No. 2/2014).

The position of a notary as a public official, in the sense, that the authority that exists in a notary is never given to other officials, as long as the authority does not fall under the authority of other officials. By these provisions, the Notary is the only official authorized to make an authentic deed regarding all acts, agreements, and stipulations required by general regulation or by the interested parties required to be stated in an authentic deed, all as long as the making of the deed by the general rule is also not assigned or excluded to officials or other people.

The authentic deed referred to as the authority of a notary made before or made by a notary is useful for people who need a deed such as a deed of establishment of a limited liability company, will, power of attorney, and so on. The presence of a Notary as a public official is the answer to the community's need for legal certainty for every engagement he undertakes, especially engagements related to trade and daily life. Written agreements made by or before a notary are called a deed. According to Article 1 point, 7 UUJN stipulates that: "A Notary Deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this law".

Notaries in carrying out their duties for making authentic deeds must be careful of deed degradation (reducing authentic deeds to underhand deeds) in making deeds must use the principle of prudence and caution so that things do not happen that violate the rules, especially Article 41 UUJN, because the article threatens the notary for the deed he made, the deed can become an underhand deed.

Article 41 of the UUJN reads as follows: Violation of the provisions as referred to in Article 38, Article 39, and Article 40 results in the Deed only having the

power of proof as a private deed. The article refers to the substance of article 38, article 39, and article 40 of the UUJN.

Article 38 concerning the organs of the deed and provisions concerning the notarial deed of Substitute and Temporary Notary Officials contain the number and date of the appointment, as well as the official who appointed them, while article 39 concerning the appearers before the notary, and article 40 concerning the reading and criteria of witnesses.

The negligence of notaries is mostly their negligence, there are several cases regarding article 41 of the UUJN, both concerning article 38 regarding organs, for example, such as neglecting information regarding the position of acting in front of which is not even contained, both a description of the signing and the place of signing.

Article 39 This often occurs in those who are capable of carrying out legal actions and the appeared must be known by a notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or have married and are capable of carrying out legal actions or introduced by 2 witnesses other.

The case of the notarial deed of Case Number: 40/Pid.B/2013/PN.Lsm with the convict Imran Zoebir Daoed, SH Bin M. Daoed has permanent legal force and has been executed by the Public Prosecutor at the Lhokseumawe District Attorney.

The case was initially only an internal feud at the Non-Governmental Development Union (Agree) but later developed into a criminal case involving a notary, Imran Zoebir Daoed, SH Bin M. Daoed, a notary in Lhokseumawe who issued the Deed of Amendment to the Non-Governmental Development Union Institution (SEPAKAT), without the presence of Edi Fadhil as Director so that he was found guilty of committing a crime of deed falsification. The case is sitting as follows (*Surat Dakwaan, 2013*):

1) That on Friday, November 02, 2012, at approximately 11.00 WIB or at least at a certain time in November 2012 at the Notary Office of Imran Zubir Daoed, SH on Jalan Pang Lateh, Simpang Empat Village, Banda Sakti District, Lhokseumawe City, witness Ilmastin, S.Pd.i Bin Rusli and witness Muslim Gunawan, S. Sos Bin Suwandi came before the defendant to the Notary Office of Imran Zubir Daoed, SH on Jalan Pang Lateh, Simpang Empat Village, Banda Sakti District, Lhokseumawe City to amend the articles of association of the Non-Governmental Development Association. Agreed, then the defendant made the minutes of the deed (original notarial deed) Number: 01. - dated 02 November 2012;

2) At the time the defendant made the minutes of the deed (original notarial deed) Number: 01. - dated 02 November 2012, the defendant falsified the letter against the notarial deed/authentic deed Number: 01. - dated 02 November 2012 by making someone appear as an appraiser before the court. before the defendant on page 1 of the notarial deed by stating in number III as Mr. Edi Fadhil, born in Lamraya, on June 16, 1984 (one thousand nine hundred and eigh-

ty-four), self-employed, residing in Cot Jambo Village, Montasik District, Aceh Besar District holder of Identity Card number: 1354/04/AB/CJ/2003. Indonesian citizen, even though Mr. Edi Fadhil, the witness of Edi Fadhil Bin Ilyas as stated in the Notary Deed, has never appeared before the defendant for the making of a notarial deed Number: 01.

3) On Friday, November 2, 2012, at approximately 15.00 WIT, Ilmastin, S.Pd.i Bin Rusli and Muslim witness Gunawan, S. Sos Bin Suwandi came to the Panin Bank office in Lhokseumawe City on Jalan Samudera Village, Kampung Jawa Lama, Banda Sakti District. The City of Lhokseumawe brought the Notary Deed Number: 01.- dated November 2, 2012, to submit a change of specimen (change of signature) or data update of the Non-Governmental Development Union (Agreed) at the Panin Bank. So as a result of changing the specimen (change of signature) or updating the data of the Institute for Non-Governmental Development (Agree) at Bank Panin using Notarial Deed Number: 01.- dated November 2, 2012,

4) The defendant's actions are regulated and subject to criminal penalties in Article 264 paragraph (1) 1 of the Criminal Code.

The case with the defendant Imran Zoebir is a criminal case of forgery of authentic deeds, however, the events of the forgery have allowed the occurrence of other crimes or crimes such as fraud, embezzlement, and so on.

The incident has been revealed as a fact at trial as the considerations of the panel of judges contained in the Lhokseumawe District Court Decision Number: 40/Pid.B/2013/PN.Lsm but this fact was not followed up with legal action in the form of an investigation by investigators, consideration of these are as follows:

“Considering, that based on the facts of the trial, the purpose of witness Ilmastin and witness Muslim Gunawan, to amend the articles of association of the agreed NGO is to withdraw money for the program activities belonging to the NGO Agreed to be stored in Bank Panin Kota Lhokseumawe in the amount of Rp.38,000,000 (thirty) eight million rupiah), by bringing to Bank Panin the Notary Deed No. 01 dated November 2, 2012, drawn up by the Defendant, which at the time was made without the presence of Mr. Edi Fadhil's appeared.”

Thus, with the change in the specimen (change of signature) or updating of the data of the NGO Agreed to the Panin Bank, then with the change of the specimen at Panin Bank, witness Edi Fadhil, who was previously the General Chair in the composition of the NGO management agreed to withdraw money at Panin Bank. In the end, he was no longer able to withdraw money or sign a checking account belonging to the NGO Agree, this was known by witness Edi Fadhil after receiving information from Bank Panin.

So at that time, Edi Fadhil asked Panin Bank to block the program money first so that witness Ilmastin and witness Muslim Gunawan could not withdraw the money from the NGO Agreement program amounting to Rp38,000,000—which was stored in the Bank.

Based on these facts, it is clear that Ilmastin and Muslim Gunawan were trying to commit fraud (attempted fraud) against Bank Panin Lhokseumawe to hand over money to them by using a deed issued by Notary Imran Zoebir or in the form of a criminal act. The attempted embezzlement of the NGO Sepakat program money was deposited in the Panin Bank account of Lhokseumawe City or at least a criminal act using a forged letter (deed).

Another deed case occurred in the deed of sale and purchase deed no. 740/2007 dated October 31, 2007, made by a notary T.Irwansyah., SH, S.Pn who already has a court decision number 7/Pdt.G./2016/PN Bna who has resigned with the cassation decision no. 3217.K/PDT/2017 which causes no legal force for the sale and purchase deed made by the notary and includes joint and multiple responsibilities, this unlawful act occurs because the notary who made the deed does not ensure the parties who violate the provisions of Article 39 UUJN.

The same case also occurred in the power of attorney to sell without the knowledge of the selling power of attorney number 02/2015 dated November 5, 2015, made by notary Ika Susilawati., SH, M.Kn has no legal force because it already has a decision 69/Pdt.G./2018/PN. Bna, and make the notary jointly and severally responsible for what he does.

The convict is a notary and the joint responsibility of a notary and does not have the legal power of a deed causes the deed he issued to become an underhand deed, this is sad if all the processes for lowering the deed have to be done with the court, the deed should be able to do with the institutional role of a notary, no need for a court decision to be completed. The lack of an institution that supports notaries makes it easy for notaries to make mistakes in making the deed.

The purpose of this study is to determine the position of the deed that meets the elements of article 41 in the notary position law, the notary's responsibility for the deed that fulfills the elements of article 41 in the notary position law.

2. Research Methods

The research method that the author uses in this research is descriptive analysis, which is a method by which problem-solving is investigated by describing or describing the current state of the subject or object of research based on the facts that appear or as they are. is. The research approach used in this research is qualitative. The qualitative method is a research procedure that produces descriptive data in written or spoken words from people and observed behavior (Nufiar & Ali, 2020).

- 1) Types of research. The type of research used is normative legal research.
- 2) Research Approach. The types of approaches used in normative legal research are as follows
 - a) Approach to legislation (statutes approach), the approach to legislation is an absolute thing in normative juridical research, because what will be studied are various legal rules that are the focus as well as the central theme of research. The approach to legislation is carried out by reviewing all laws and regulations related to the legal issues being handled.
 - b) Conceptual approach. This approach looks at existing theories regarding

notarial matters and concerning the degradation of deeds to the elements that are fulfilled in Article 41 of the UUJN.

c) Analytical approach. This approach is more focused on analyzing a decision, analyzing the concept, and analyzing the decision to produce a formulation of the research.

d) Case approach (case approach). The case approach is one type of approach in normative legal research that tries to build legal arguments from the perspective of concrete cases that occur in the field.

3. Theoretical Framework

3.1. Authority Theory

Juridical authority does not escape the government's authority comes from laws and regulations, meaning that government authority comes from laws and regulations without laws and regulations, the government does not automatically (Ridwan, 2016), authority itself is the ability given by laws and regulations to cause legal consequences. The authority originating in legislation is divided into attribution (granting government authority by makers of laws and regulations to organs), Delegation (delegation of government authority from organ to organ), and mandate (allowing its authority to be exercised by other organs). Another definition of authority is a legal action that is regulated and given to a position based on the applicable laws and regulations governing the position in question. Thus, each authority has its limits as stated in the laws and regulations that govern it. The authority of a notary is limited to the laws and regulations governing the position of the official concerned (Adjie, 2008). JG Brown¹ argues that attribution is the authority given to a government organ (institution) or state institution by an independent legislative body.

1) Responsibility Theory

According to Hans Kelsen in his theory states that: a person is legally responsible, the subject means that he is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the case of a contrary act.² Hans Kelsen further stated that (Kelsen, 2007):

“Failure to exercise the prudence required by law is called negligence; and error is usually seen as a different kind of error (culpa), although not as severe as the fault fulfilled by wishing, with or without malicious intent, to harmful consequences.”

Furthermore, Hans Kelsen divided the responsibilities into 4 (four) parts consisting of:³

¹JGBrouwerdan EA. Schilder, A survey of Dutch Administrative, Ars Aequi LIBRI, Nijmegen hlm 16-17.

²Hans Kelsen, General Theory Of Law and State, General Theory of Law and State, Fundamentals of Normative Law as an Empirical Descriptive Law, Somardi Translation, BEE Media Indonesia, Jakarta (hereinafter written by Hans Kelsen II), 2007. P 81.

³Hans Kelsen, Pure Legal Theory, Translation of Raisul Mutaqie, Nusa & Nusamedia, Bandung (hereinafter written by Hans Kelsen III), 2006. page 140.

- a) Individual responsibility, namely an individual is responsible for violations committed by himself.
- b) Collective liability means that an individual is responsible for an offense committed by another person.
- c) Liability based on guilt means that an individual is responsible for violations committed intentionally and to cause harm.
- d) Absolute liability means that an individual is responsible for violations committed by accident and unforeseen.
- e) When connected to this research, the theory of responsibility is used to determine the notary's responsibility for the deed he issued

3.2. Legal Certainty Theory

Normative legal certainty is when regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical. It is clear in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to the application of a clear, permanent, consistent, and consequent law whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands but factually characterize the law. An uncertain and unjust law is not just a bad law (Christine, 2009).

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions may or may not be done, and second, in the form of legal security for individuals from arbitrariness. Individuals can know what the State may charge or do to them because of the existence of general rules (Syahrani, 1999).

Legal certainty is a guarantee of law that contains justice. Norms that promote justice must function as rules to be obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He argues that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country. Finally, positive law must always be obeyed (Ali, 2002).

If it is related to Article 41 of the UUJN, the theory of legal certainty, there is a mechanism for a deed that can be said to be an underhand deed where the elements in one of these articles are fulfilled, whether it is related to Article 38, Article 39 and Article 40, the mechanism that resulted in the issuance of the deed. is an administration that must be carried out by a notary or several notaries in issuing a deed.

4. Discussion

4.1. The Position of the Deed Fulfilling the Elements of Article 41 in the Notary Position Act

Notaries in carrying out their duties are based on laws and regulations which are often called the Notary Position Act (UUJN) Number 2 of 2014 Jo. Law Number

30 of 2004. In the provisions of the Notary Position Regulations and the Notary Position Act (UUJN), essentially states that the main task of a notary is to make authentic deeds. Article 1870 of the Civil Code states that an authentic deed gives an absolute agreement to the parties who made it. Thus, the importance of the position of a notary is in the authority of a notary given by law to make absolute evidence or tools and therefore the authentic deed is essentially true. So it is very important, especially for those who need it in personal or business matters.

An authentic deed is a valid document and can be perfect evidence. Perfect here means that the judge considers everything stated in the deed to be true unless there is other evidence that can prove that the contents of the first deed are not true. Several reasons support the legal force of an authentic deed. An authentic deed is made before a public official so that its legality can be ensured, plus that public officials do not take sides in making the deed. This is different from a deed made by yourself, even though it is witnessed by a third party, but it cannot be used as a guarantee. The parties involved in making the deed may deny their involvement. This can happen because they have their interests.

Notaries in making authentic deeds may not commit violations as stated in Article 41 of the UUJN which reads: "Violations of the provisions as referred to in Article 38, Article 39, and Article 40 result in the Deed only having the power of proof as an underhand deed."

The provisions mentioned above are legal requirements for making an authentic deed. If these provisions are not fulfilled, then by the contents of Article 41 of the UUJN, the deed only has the power of proof as a private deed. An authentic deed has the power of proof which is a condition of assessing an authentic deed as evidence. In this case, there are 3 (three) aspects that must be considered when the deed is made, these aspects are related to the evidentiary value, namely outward proof, namely: The physical ability of a notary deed is the ability of the deed itself to prove its validity as an authentic deed, Formal Proof (*formele bewijskracht*), where the notary deed must be able to provide certainty that an event and fact mentioned in the deed is carried out by a notary or explained by the parties who appear at the time stated in the deed by the procedures that have been determined in the making of the notary deed. Formally to prove the truth and certainty about the day, date, month, year, at (time) to appear and the parties appear initials and signatures of the parties/appearing, witnesses and notaries. Regarding the material of a deed, that what is stated in the deed is valid evidence against the parties who made the deed or those who have rights and apply to the public, unless there is evidence to the contrary.

A notary who does not comply with or does not carry out his obligations by the provisions of Article 16 paragraph (1) letter m UUJN, in this case, is a notary who does not sign the deed before the parties and witnesses, it will be implicated in the emergence of legal consequences, namely as follows: 1) The legal consequences for a notary are temporary dismissal from his position as a notary because he has violated the obligations and prohibitions of office as stated in Ar-

ticle 9 paragraph (1) letter d of the UUJN; 2) The legal consequence of the deed is that the deed will lose its authenticity or be degraded into a private deed as stated in Article 16 paragraph (9) of the UUJN.

According to Habib Adjie that to determine a Notary deed that has the power of proof as an underhand deed or will become null and void by law, it can be seen and determined from the contents (in) certain articles which confirm directly if the Notary commits a violation, then the deed concerned including a deed that has the power of proof as a deed under the hand. If it is not explicitly stated in the article in question as a deed that has the power of proving that part of the deed is underhand, then the other articles which are categorized as violating according to Article 84 of the UUJN, are included in the deed null and void. There are 3 cases raised in this thesis, namely:

1) An internal dispute at the Non-Governmental Development Union (Agree) but later developed into a criminal case involving a notary, Imran Zoebir Daoed, SH Bin M. Daoed is a notary in Lhokseumawe who issued the Deed of Amendment to the Non-Governmental Developers Union (SEPAKAT) without Edi's presence Fadhil, as the Director, was found guilty of committing a criminal act of deed forgery.

2) Deed of sale and purchase no. 740/2007 dated October 31, 2007, made by a notary T.Irwansyah.,SH,S.Pn who already has a court decision number 7/Pdt.G./2016/PN Bna who has resigned with the cassation decision no. 3217.K/PDT/2017 which causes no legal force for the sale and purchase deed made by the notary and includes joint and multiple responsibilities, this unlawful act occurs because the notary who made the deed does not ensure the parties who violate the provisions of Article 39 UUJN.

3) The power of attorney case to sell without the knowledge of the selling power of attorney number 02/2015 dated November 5, 2015, made by notary Ika Susilawati., SH, M.Kn has no legal force because it already has a decision 69/Pdt.G/2018/PN. Bna and make the notary jointly and severally responsible for what he does.

The cases mentioned above are violations committed by the Notary in making the deed because the Notary has violated the violation committed by the Notary against the provisions referred to in Article 41 of the UUJN where there is no agreement from the parties relating to the deed. made by a Notary so that the deed does not meet the elements of the legal requirements of the agreement by Article 1320 of the Civil Code, which results in a deed only having the power of proof as an underhand deed or a deed being null and void can be a reason for the party suffering losses to sue reimbursement of costs, compensation, and interest to a Notary because these cases contain elements of a criminal act that can harm one of the interested parties.

4.2. Responsibilities of a Notary to Deeds Fulfilling the Elements of Article 41 in the Law on Notary Positions

The Notary's responsibilities in the cases described previously related to Ar-

ticle 41 of the UUJN in making authentic deeds. This thesis will explain the Civil and Criminal Responsibilities of a Notary.

1) Civil Legal Liability

Civil legal liability cannot be separated from elements of unlawful acts. Acts against the law, namely the existence of an act that is against the law, the existence of an error, and the loss caused. Acts against the law here are broadly defined, namely an act that not only violates the law but also violates propriety, decency, or the rights of others and causes harm. An act is categorized as an unlawful act if the act violates the rights of others, is contrary to the legal obligations of the perpetrator, is contrary to decency, is contrary to propriety in paying attention to the interests of oneself and the property of others in everyday life.

A notary committing an unlawful act can be based on Article 1365 of the Civil Code which states “every unlawful act that causes harm to another person, obliges the person who because of his mistake to issue the loss, compensates for the loss. So that the article is the basis for declaring that the act committed by a Notary is an act against the law.” According to Meyers, subjective rights are special powers granted by law to someone who can obtain them for their interests. Subjective rights consist of material and absolute rights, personal rights which include the right to have the integrity to life and life, the right to personal property, the right to honor and privilege as well as a good name (Djojodirjo, 1982).

If the elements of error mentioned above are fulfilled, the notary who has made a legally flawed deed is guilty in addition, so as long as the actual error is culpa, in this case, the stance must be adopted, that it is not the subjective condition of the person concerned that determines to what extent far the responsibility, but must be based on an objective consideration. In this case, it must be asked whether a notary who is normal and good should not be able to know the desired result, if the answer is so then in that case there is an error, and if not then the notary is concerned cannot be blamed (Tedjosapatro, 1991).

Based on the provisions of Article 15 of the UUJN in conjunction with Article 1865 and Article 1870 of the Civil Code, that the existence of an authentic deed as a realization of the notary’s authority is perfect evidence to postulate, confirm or refute the rights of others. Thus, the purpose of the granting of this authority is to regulate the flow of civil law traffic that occurs between members of the community through an authentic deed, and the deed has been equipped with the power of proof which is sought as a preventive measure against parties who admit something based on an illegitimate right. If a notary is negligent in making a deed, resulting in a legally flawed deed, it can be said that there has been an abuse of authority. Considering that the notary concerned did not only think in terms of the interests of the parties, which at that time was very urgent to make a notary deed, and also considered the deed to be legitimate, with the principle that many notaries hold in practice, that the important thing is that the parties agree. The situation of abuse of authority is increasingly clear with the element of loss suffered by other people, related to the making of a legally flawed deed.

The losses suffered by the parties are very visible when the deed is canceled as a final consequence of the legally flawed deed. The situation of abuse of authority is increasingly clear with the element of loss suffered by other people, related to the making of a legally flawed deed. The losses suffered by the parties are very visible when the deed is canceled as a final consequence of the legally flawed deed. The situation of abuse of authority is increasingly clear with the element of loss suffered by other people, related to the making of a legally flawed deed. The losses suffered by the parties are very visible when the deed is canceled as a final consequence of the legally flawed deed.

2) Criminal Liability

Criminal Liability According to Hermin Hediati Koeswadji, an act against the law in a criminal context or an act that is prohibited by law and is punishable by punishment has the following elements (Priyatno, 2004): Objective elements are elements that exist outside humans, which can be in the form of:

- a) An act or behavior that is prohibited and is threatened with criminal sanctions, such as falsifying letters, perjury, theft.
- b) A certain result that is prohibited and threatened with criminal sanctions by law, such as murder, torture.
- c) Circumstances or things that are specifically prohibited and threatened with criminal sanctions by law, such as inciting, violating public decency.

Notaries can be said to have committed acts against the law in the context of Criminal Law as well as violating the code of ethics and UUJN so that the terms of punishment become stronger. If this is not accompanied by a violation of the code of ethics or even justified by UUJN, then perhaps this can eliminate the unlawful nature of an act with justification. Criminal liability is born with the continuation of objective reproaches (*verwijbaarheid*) against actions that are declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to criminal charges because of their actions.

This is based on the principle of not being punished if there are no mistakes or “*actus non facit reum nisi mens sit rea*”. People cannot be held accountable and punished if they do not do something wrong. However, someone who commits a criminal act, may not necessarily be punished. A person who commits a criminal act will be punished if he has made a mistake (Priyatno, 2004). The imposition of criminal sanctions against a notary can be carried out as long as the limits mentioned above are violated, meaning that in addition to fulfilling the formulation of the violation as stated in the UUJN and the code of ethics for the position of a notary, the notary must also fulfill the formulation stated in the Criminal Code.

If the violation or unlawful act committed by a notary fulfills the formulation of a criminal act, but if it is based on the UUJN and according to the assessment of the Regional Supervisory Council, it is not a violation. So the notary concerned cannot be sentenced to a criminal sentence, because the measure to assess

a deed must be based on the UUJN and the code of ethics for the position of a notary.⁴ The notary's criminal responsibility for the deed he made is not regulated in the UUJN but the criminal liability of the notary is imposed if the notary commits a criminal act.

UUJN only regulates sanctions for violations committed by a notary against UUJN. The sanctions can be in the form of a deed made by a notary that does not have authentic power or only has the power as an underhand deed. The notary himself can be given sanctions in the form of a warning to dishonorable dismissal. Criminal sanctions are considered as the strongest sanctions for unlawful acts committed by a notary because as mentioned above criminal sanctions are the ultimum remedium, namely the last remedy if civil, administrative, or ethical sanctions of a notary do not work or are considered ineffective in punishing or making The notary becomes a deterrent not to commit acts against the law again.

The procedure for the application of criminal sanctions is based on a court decision that already has legal force whose decision punishes a notary to undergo certain crimes. So the criminal responsibility of a notary who commits an unlawful act is that a notary is responsible for his actions by imposing criminal sanctions on a notary who commits an unlawful act. Notaries can be sentenced to criminal sanctions in the form of imprisonment or imprisonment or other crimes regulated in the Criminal Code.

Acts against the law of a notary in the realm of Criminal Law can be in the form of falsification of documents or letters as regulated in the provisions of Article 263 and Article 264 of the Criminal Code. Article 263 paragraphs (1) and (2) of the Criminal Code.²¹ While the explanation of Article 264 paragraphs (1) and (2) of the Criminal Code states that: Forgery of letters is punishable by a maximum imprisonment of eight years if committed against:

- a) Authentic deeds.
- b) Debt securities or debt certificates from a country or part thereof or a public institution.
- c) Sero letters or debts or certificates of holdings or debts from an association, foundation, company, or airline.
- d) Talon, proof of dividends or interest from one of the letters described in 2 and 3, or proof issued instead of the documents.
- e) Letter of credit or trade letter intended for circulation.

The UUJN stipulates that when a notary in carrying out his duties is proven to have committed a violation, the notary can be subject to or be subject to sanctions, in the form of civil, administrative, and code of ethics for the position of a notary. These sanctions have been regulated in such a way, both previously in the PJN and now in the UUJN and the Code of Ethics for Notary Positions, which do not regulate the existence of criminal sanctions against notaries.

In practice, it is found that a legal action or violation committed by a notary

⁴Interview of Notary and PPAT in Banda Aceh, November 11, 2021

can be subject to administrative or civil sanctions or a notary code of ethics, but is later withdrawn or quantified as a crime committed by a notary. The qualification relates to aspects such as (Adjie, 2008):

- a) The certainty of the day, date, month, year, and time of day;
 - b) The party (who—the person) who appears before the Notary;
 - c) Facing signature;
 - d) The copy of the deed does not match the minutes of the deed;
 - e) There is a copy of the deed, without the minutes of the deed being made;
- and
- f) The minutes of the deed is not signed in full, but the minutes of the deed is issued.

If these aspects are proven to have been violated by a notary, then the notary concerned may be subject to civil or administrative sanctions, or these aspects are limitations which if proven can be used as the basis for imposing administrative sanctions and civil sanctions against the notary.⁵ However, it turns out that on the other hand, such limitations are pursued or resolved criminally or used as the basis for criminalizing a notary on the basis that the notary has made a forged letter or falsified a deed with qualifications as a crime committed by a notary. The limitations that are used as the basis for criminalizing the notary are a formal aspect of the notary deed and should be based on the UUJN. If the notary is proven to have violated the formal aspect, it can be subject to civil sanctions or administrative sanctions depending on the type of violation or sanctions for the code of ethics for the position of a notary.

Criminalizing a notary based on these aspects without conducting in-depth research or evidence by looking for elements of error or intentionality from the notary is an act without a legal basis that cannot be accounted for. The imposition of a criminal sentence on a notary does not automatically become null and void by law. It is not legally correct if there is a criminal court decision with a decision to cancel the notary deed because the notary is proven to have committed a criminal act of forgery. Thus, what must be done by those who will or wish to place a notary as a convict, on a deed made by or before the notary concerned, then the legal action that must be taken is to cancel the deed in question through a civil lawsuit. In the imposition of the sanctions mentioned above, it is necessary to link them to the objectives, nature, and procedures of these sanctions. The imposition of civil, administrative, and criminal sanctions has different targets, characteristics, and procedures.

Administrative sanctions and civil sanctions are reparatory or corrective, meaning to improve a situation so that it is not carried out again by the person concerned or by another notary (Priyatno, 2004). Regressive means that everything is returned to a state before the violation. In certain legal rules, in addition to administrative sanctions, criminal sanctions can also be imposed (cumulatively) which are condemnatory (punitive) or punishing, in this connection the

⁵Interview with Notary and PPAT in Banda Aceh, 30 November 2021.

UUJN does not regulate criminal sanctions for notaries who violate the UUJN (Priyatno, 2004). If such a thing happens, the notary is subject to a general crime. The procedure for imposing administrative sanctions is carried out directly by the agency that is authorized to impose such sanctions, and civil sanctions are based on court decisions that have permanent power whose decisions punish a notary to pay fees, compensation, and interest to the plaintiff, and procedures for criminal sanctions based on a court decision that already has legal force whose decision punishes a notary to undergo certain crimes.

The imposition of administrative sanctions and civil sanctions is intended as a correction or reparation and regression of the actions of a notary from the formal aspects of a notary deed can be used as a basis or limitation to criminalize a notary, as long as the formal aspects are proven intentionally (with full awareness and with conviction and planned), by the notary concerned) that the deed made before and by the notary to be used as a tool to commit a crime or in the making of a deed of parties or a deed of release. Another aspect that needs to be used as a limitation in terms of violations by a notary must be measured based on the UUJN, meaning whether the actions carried out by a notary violate certain articles in the UUJN, because there is a possibility according to UUJN that the deed in question is by UUJN, but according to the investigators, the act is a criminal act. Thus, before conducting further investigations, it is better to ask the opinion of those who know for sure about this matter, namely from the notary position organization. Thus, the punishment of a notary can only be carried out with limitations, if:

- a) There is legal action from a notary against the formal aspect of the deed which is intentionally, consciously and consciously, and planned, that the deed made before a notary or by a notary jointly (agrees) to be used as a basis for committing a crime;
- b) There is legal action from a notary in making a deed before or by a notary which is measured based on UUJN is not by UUJN; and
- c) The notary's actions are not appropriate according to the agency authorized to assess the actions of a notary.

The imposition of criminal sanctions against a notary can be carried out as long as the limitations as mentioned above are violated, meaning that in addition to fulfilling the formulation of the violation as stated in the UUJN and the Code of Ethics for the Office of a Notary, they must also fulfill the formulation stated in the Criminal Code. If the notary's action fulfills the formulation of a criminal act, but if it turns out to be based on the UUJN and according to the judgment of the Notary Supervisory Board it is not a violation, then the notary concerned cannot be sentenced to a criminal sentence, because the measure to assess a deed must be based on the UUJN and the Notary's Code of Ethics.

Criminal sanctions are an *ultimum remedium*, which is the last remedy if sanctions or other measures in other branches of law do not work or are deemed ineffective. Therefore its use should be limited. If there is another way, do not use criminal law (Budiono, 2005). According to Meijers, it is necessary to have a

big mistake (hard schuldrecht) for actions related to working in the field of science (wetenschappelijke arbeiders) such as a notary (Budiono, 2005).

Notaries are not builders of deeds or people who have the job of making deeds, but notaries in carrying out their duties are based on or equipped with various legal knowledge and other sciences that must be mastered in an integrated manner by a notary. The deed made before or by a notary has a position as evidence, thus the notary must have good intellectual capital in carrying out his duties. Examination of a notary is inadequate if it is carried out by those who have not studied the world of notaries, meaning that those who will examine a notary must be able to prove the big mistake made by a notary intellectually, in this case, the power of logic (law) required in examining a notary, not a logical force (means power) which is required in checking the notary.

5. Conclusion

1) The concept of an authentic deed is interpreted in the sense of statutory regulations, so it can be said that all deeds issued by public officials, who according to the laws and regulations have the authority to make the deed, are authentic deeds. The position of the notary deed is very important in the law of evidence in Indonesia. This is indicated by the understanding that a notarial deed cannot be immediately canceled because the notarial deed is the product of a public official who is part of a state institution in a broad sense and the deed is a state archive. So the position of an authentic deed is a valid document and a perfect proof tool.

2) As a public official (*openbaar ambtenaar*) about his authority, a Notary in making an authentic deed can also be held responsible for his actions/work in making an authentic deed. The Notary's responsibilities as a public official include the responsibilities of the Notary profession itself related to the deed, including Civil and criminal responsibilities of the Notary for the deed he made. The responsibility, in this case, is the responsibility for the material truth of the deed, in the construction of an unlawful act.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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