Criminal Offence of Falsifying Authentic Deed in The Implementation of Notary Department

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Abstract
The notary in conducting his profession is not infrequently called by the police law as a suspect in connection with the forgery of the authentic deed he made, that the notary can be used as a suspect if the notary Deliberately make a false deed as requested by the parties, when the notary knows that the parties do not meet the terms of the validity of the alliance. This indicates that the notary does not cling to the notary Act (UUJN) and the notary Public Code of ethics, which resulted in a notary criminal can perform authentic acts of fraud/deed. The Notary Law (UUJN) does not formulate the application of the sanctioned sanctions but a legal action against violations committed by the notary would contain counterfeit elements of deliberate intent/omission in the creation of Authentic letter/deed whose information is false can be qualified as a criminal offence committed by the notary who describes the evidence of involvement deliberately commit the crime of counterfeit authentic deed. The research is a normative juridical study. Normative research examines and analyzes the legal norms that have been established by the competent authorities for that, so the type of research used in this research is prescriptive, namely the process to find the rules Legal, legal principles, and legal doctrines to address the issues faced. The results of this research show that the legal consequences for the notary criminal who commit the crime of authentic deed are: in terms of criminal law, the notary threatened to be sentenced to the threat of article 264 Criminal Code about the counterfeiting of a authentic deed with the threat Maximum sentence of eight years in jail. In terms of civil law, notaries can be sued for damages by the parties who feel harmed. In addition, the relevant notary public may be subject to administrative sanctions from a notary Organization (THIS) in the form of: Oral strikes, written strikes, temporary dismissal, dismissal termination, disrespectful termination.

Keywords: criminal acts of counterfeiting, authentic deeds, notary sanctions

Abstrak

Kata kunci: Tindak Pidana Pemalsuan, Akta Otentik, Sanksi Notaris
Introduction

Notary is a position or profession that is directly related to the law, as in other positions given by the notary state has provisions that must be adhered to by the Notary namely Law No. 2 of 2014 on Changes to Law No. 30 of 2004 on notary positions. The number of letters forgery cases in the last five years from 2014 (two thousand fourteen) to 2019 (two thousand nineteen) conducted by notaries amounted to 4,060 (four thousand sixty) cases. A small number of cases can give a bad image to a Notary and can cause public distrust of the Notary where the Notary is a State Official who understands the rule of law wherein carrying out his office is bound by the Code of Conduct of the Notary Department, and authorized by the state to make an Authentic Deed instead of committing a criminal act of forgery against the authentic deed he made, while the notary position is a position based on the trust of the public to use his services to make an authentic deed.

The law of the Notary Department (UUJN) has used jointly notary institutions as positions (notary positions) and Notary as professions (notary professions) or the term is likened (equivalent) to its use (Adjie, 2014). The wording (c) of Law No. 30 of 2004, on notary departments, is formulated: "that notary is a particular position that conducts the profession in legal service to the community, needs to obtain protection and assurance in order to achieve legal certainty".

Article 1 of the Notary Department Act, it is stated that the Notary is the only Public Official authorized to make an authentic deed of all acts, agreements, and determinations required by general regulation or by a person of interest required to be declared in an authentic deed, guarantee the certainty of the date, keep his deed and provide Grosse, copies and quotations, all to the fullest of those deed by regulation nor assigned or excluded to officials or others (Lubis, 2008). Notaries are obliged to include what is included in the deed is completely and completely understood and in accordance with the will of the parties by reading it until it becomes clear the contents of the deed, as well as providing access to the relevant information and laws and regulations for the parties.

Authentic deed as the strongest and perfect proof tool has an important role in every legal action in people's lives, whether in various business activities, activities in the field of banking, land, social activities, and others. The increasing need for written evidence in the form of authentic deed in line with the development of public legal awareness, demands legal certainty in various relationships both at the national, and global levels. An authentic deed can clearly determine a person's rights and obligations, guarantee legal certainty, and
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at the same time be expected to avoid a dispute. Notary in carrying out his profession is rarely called by the police law officer as a suspect in connection with the falsification of the authentic deed he made, that notary can only comply with the rule of law as a suspect if the Notary deliberately continues to make false deed as requested by the interceptor, even though the Notary knows that the interceptor does not meet the legal requirements of the alliance. This indicates that the Notary does not adhere to the Notary Department Law (UUJN) and the Notary Professional Code of Conduct which resulted in the Notary being able to commit the crime of falsifying authentic letters/deed. The Law of the Notary Department (UUJN) does not formulate the application of funding sanctions but legal action against the violation committed by the Notary contains elements of forgery/negligence in the creation of an authentic letter/deed whose information is false then can be qualified as a criminal offense committed by the Notary explaining the evidence of involvement in intentionally committing the crime of authentic falsification of the deed.

Research Problems

Based on the issues outlined above, it is interesting for the authors to carry out this study, so the legal issue raised in this study is "The legal consequences for notaries who commit crimes of falsification of the authentic deed."

Research Method

This study uses a type of normative juridical research. Normative juridical research or so-called literature law research is legal research conducted by examining library materials or mere secondary data that then uses a descriptive qualitative approach, namely data in the form of rules of legislation, explanatory sentences, and theories collected from literature, legal documents, and others that have been compiled regularly, then the processing of data is carried out by systematizing the written legal materials. Systematization means making the classification of legal materials to facilitate the work of analysis and construction, analyzed which will then be discussed until conclusions are drawn.

Discussion

1. Research Results

The author obtained data in the form of information from the source related to the problems in the legal issue of this study, consisting of Judges and Notaries. The results of the author’s interview with the source will be explained as follows:
a. Results of Interviews with Judges

1.) M. Arif Nuryanta, SH. MH. Chairman of Purwokerto District Court who was interviewed on Thursday, July 11, 2019;

During my time as a judge, I have handled a criminal case whose defendant is a Notary who committed a felony forgery, while serving in Bangkinang District Court, but the details of the case are not so remembered. The elements that the judge judges consider in making a verdict related to the criminal act of falsifying authentic deed are Whoever, in this case, the person who did/ person, then intentionally made a false letter which means with full awareness of making a letter whose contents are not true/false, and the perpetrator realizes that his actions have legal implications, and against the authentic deed that is the object of the forged letter is an authentic deed.

In considering the weight in handing down the verdict I would prefer to see who the perpetrator of the forgery is if the perpetrator is a Notary, the clerk who is should is authorized by the state to make an authentic deed, and understand very well what they do because of a literate person, but they abuse the authority that he or she is given, then it is very reasonable when the sentencing is severed.

That regarding the criminal prosecution of the perpetrator of a crime is to be fully authorized by the judge and every case with a case that may be almost the same, then the verdict must also vary, we can not get an idea of how long that can be dropped, because we have to look at the facts found in the trial, because there are objective and subjective factors as well and look at the elements, and other reasons that can complicate or shorten the sentence, and of course also depending on the judge’s consideration of how the judge’s conviction is concerned in looking at the case itself, so there are many factors that we have to consider.

The legal consequences for notaries who commit criminal acts of falsification of authentic deed are of course criminal sanctions, civil sanctions if the victim bases the criminal verdict to then sue civilly, whose mechanism is separate litigation regardless of the criminal case, and sanctions from the organization with procedures governed following the provisions of the organization.

2.) Arif Yudiarto, SH. MH. The Judge of Purwokerto District Court who was interviewed on Friday, July 12, 2019;

During his time as a judge has never handled/filed a case with a Notary as a defendant, but for civil cases have been several times notary as a
defendant either as Defendant or Defendant. He explained about the elements of forgery of authentic deed namely Goods who in this case the person who committed the crime, deliberately made a false letter has the intention of intentionally having made a letter whose contents are false, with the intention that others assume that the contents are not fake when the perpetrator realizes that his actions have legal implications, against the authentic deed which means the object of the forged letter is an authentic deed.

Sentencing, if the perpetrator is a Notary, that the Notary is a public official, appointed by the state, and authorized to make an authentic deed, the Notary is a person who understands the law and knows the consequences of his actions, if in his opinion of the perpetrator of forgery when compared to the perpetrator of an ordinary person with a Notary surely the Notary will be more severely punished, for the perpetrator of an ordinary person with the perpetrator a Notary surely the punishment will be more severe if, for example, the ordinary person in the sentence dropped 1/2 for the notary perpetrator can be 2/3 of his threat, although maybe the prosecutor’s demands could be more severe than the charges. However, still, I have to look at the case, for example, the notary does that because there is smuggling data or information from the intercept, or because of certain circumstances, yes while still considering the incriminating and lightening aspects.

As a result of the law against notaries who commit crimes in addition to getting criminal sanctions can also be civilly sued and sanctioned by the organization that oversees notary namely INI.

3.) Kopsah, SH. MH. The judge in Majalengka District Court who was interviewed on Thursday, July 11, 2019;

I have not dealt with a criminal case of forgery since 2009 with a notary defendant, but if I handle a civil case with a defendant or also his defendant in the profession as a Notary have dealt several times.

The counterfeiting elements of the authentic deed, namely, are Whoever, in this case, the person who did/person. By intentionally creating a fake letter, by deliberately creating a letter whose contents are incorrect. Against the authentic deed, the object of the forged letter is an authentic deed.

The weighting of the notary perpetrator who commits an authentic deed forgery, I think it is necessary because a Notary is a capable person of law, understands the rules of law until committing a criminal act by will, I as a judge will decide more severely than the perpetrator who is an ordinary
person, because the Notary is the official authorized to make an authentic deed, with him committing the crime of falsifying the authentic deed, which means to have abused the authority given by the state to him.

b. Results of Interviews with Notaries

1) Nurhidayati, SH. MKn. Notary in Banyumas Regency on Thursday, July 11, 2019;

Regarding the criminal case of the falsification of an authentic deed by the notary. I think the violation deserves a criminal sanction because his act of falsifying an authentic deed is a criminal act so it is appropriate if the Notary in question is also criminally sanctioned. However, if it is still possible for the Notary to correct the mistakes he has made it will be better if the problem can be solved by family deliberation and not reach the realm of law.

2) M. Emilia Widyanti, SH. Sp.N. Notary in Banyumas Regency interviewed on Saturday, July 13, 2019;

If a Notary has been proven to commit a criminal act of falsification of an authentic deed is enough to get a criminal sanction because the criminal sanction in question has been given the same punishment for his actions. However, it does not cover the possibility that if his actions are indicated severely and very adversely, or that he committed repeated criminal acts, to disfavor the profession of Notary, can also in addition to getting criminal sanctions also get sanctions from organizations such as dismissal.

2. Analysis

The result of the law is the output of law enforcement which can be verdicts, determinations, sanctions, etc. The legal sanctions in Indonesia’s positive law consist of 3 types of administrative sanctions, civil sanctions, and criminal sanctions. Sanctions against Notaries are not only Civil Sanctions and Administrative Sanctions, but also sanctions against Notaries may be subject to other sanctions, namely Criminal Sanctions and Sanctions code of conduct of the Department. Criminal Sanctions will be imposed if the Notary in carrying out his/her official duties has fulfilled certain elements of a criminal offense under the Criminal Code of Law (Penal Code), and the Sanction of Conduct will be imposed if it violates the various provisions outlined in the Code of Conduct of the Notary Department. Sanctions are punitive measures to force people to keep agreements or obey the provisions of the law. Every rule of law that applies in Indonesia there is always a sanction on the rule of law. The inclusion of sanctions in various rules of law such as the obligation in question does not meet the rule of law. It is as if the
rule of law in question is toothless or unenforceable or will not be adhered to
if at the end does not include sanctions. There is no point in enforcing the
rules of law while the rules cannot be imposed through sanctions and
enforcing the rules procedurally (event law).

Notaries as General Officers must be Independent. In the colloquial terms
of the Term Independent, this is often equally self-meaning. In the concept of
management that the application of independent terms means the institution
in question managerially can stand alone without depending on its superiors,
but institutionally it remains dependent on its superiors. While independent
both managerial and institutional are not dependent on the boss or to the
other party. This independently questioned the independence of the General
Office from the intervention or influence of other parties or was assigned by
other agencies. Therefore in the Independent concept, this should be
balanced with the concept of Accountability (Adjie, 2009).

Habib Adjie explained that accountability questioned the openness
(transparency) of receiving outside supervision and responsibility to the
parties of their work or the implementation of their duties.

In this Independence, there are 3 (three) forms namely: Structural
Independent, which is institutionally independent which in the structure
chart (organigram) is firmly separated from other institutions. In this case,
even though the Notary was appointed and dismissed by the Minister of
Justice, institutionally it does not mean to be subordinate to the Minister of
Justice or to be within the structure of the Ministry of Law and Human Rights
of the Republic of Indonesia.

a. Functional Independent, i.e. independent of its functions following the
   laws and regulations governing the duties, authorities, and positions of
   notaries.

b. Financial Independent, which is independent in the field of finance
   that has never obtained a budget from any party.

Based on the above description, in the Independent concept related to the
concept of Accountability or Accountability, which consists of:

a. Spiritual Accountability. This relates directly to the belief in the One-
   One God and is personal. Such accountability can be seen from the
   sentence stipulated in the Oath/appointment of the Notary
   Department, namely "For God’s sake, I swear". Therefore, because of
   how spiritual accountability is implemented, it will depend on the
   notary in question. Only the One God and himself know. Spiritual
   Accountability is supposed to color in every action/action we do when
carrying out the duties of his office, meaning that what we do is not only accounted for to the people but also the Almighty God. It is therefore very important that the values "Godhead" accompany each of our behaviors, actions, and deeds.

b. Moral accountability to the public. The presence of notaries is to serve the interests of the people who need Authentic deed or other letters that are the authority of notary. Therefore the community reserves the right to control the "work" of the Notary. One of the concretizations of this accountability, for example, the public can sue a notary, if it turns out that the results of his work harm members of the community. Or there are notary actions that can "injure" the community that inflicts harm both material and immaterial to the community.

c. Legal accountability. Notaries are not persons/positions that are "immune" (immune) from the law. If there are notary actions that according to the provisions of the applicable law can be categorized as unlawful (criminal, civil, administrative), then inevitably we must be held accountable.

d. Professional accountability. Notaries can be said to be professional if equipped with a variety of qualified intellectual capital that can be applied in practice, but not "artisan", but in terms of how to process abstract values or provisions into a written form (deed) as desired by the parties. Therefore we do not get tired and bored to always improve the quality and quantity of our scientific so that we are always professional.

e. Administrative accountability. Before running for office/duty as a Notary has certainly had our appointment letter as a Notary, so that our legality should not be questioned anymore, but that until now is still a question for us as notaries administratively in the appointment and payroll of employees. Many Notaries appoint employees because of "friendship" or "brotherhood". Whatever his background there should be an administrative improvement. Then also the other is about "archiving" the deed, sometimes we organize it "origin", when in fact the deed is a state archive that we must "administration" carefully. Therefore it is very reasonable that we should learn "Notary Office Management" which is the basic material from the experiences of the previous Notary which is then booked.

f. Financial accountability. This form of financial accountability is that we carry out our obligation to pay taxes. Or pay lain's obligations to
the organization, such as monthly dues for example. Then also paying the salaries of our employees does not always spur (or more than) to the Regional Minimum Wage (UMR). At some point, it must be improved by all of us (Adjie, 2009).

Sanctions are a means of coercion, in addition to punishment, as well as obeying the provisions specified in the rules or treaties (Algra, 1983). Sanctions are also interpreted as a means of coercion as punishment if they do not comply with the agreement (Wojowasito, 1995). According to Philipus M. Hadjon (Hadjon, 1996), sanctions are a tool of public law that is used by rulers in reaction to non-compliance with administrative legal norms, thus the elements of sanctions, namely:

a. As a tool of power.
b. Public law
c. Used by the ruler.
d. In reaction to non-compliance.

Sanctions are an important part of the law (Hadjon, 1996), and every rule of law that applies in Indonesia is always sanctioned at the end of the rule of law. The burden of sanctions in Indonesia is not only contained in the form of legislation but can be in other forms of regulation, such as ministerial decisions or other forms under the law (Djatmiati, 2004). The inclusion of sanctions in such various rules of law is an obligation that must be included in each rule of law. It is as if the rule of law in question is toothless or unenforceable or will not be adhered to if at the end does not include sanctions. There is no point in enforcing the rules of law while the rules cannot be imposed through sanctions and enforcing the rules procedurally (event law) (Hadjon, 1996).

These sanctions always exist on the rules of law that qualify as coercive rule of law. Disobedience or violation of an obligation outlined in the rule of law results in an actual irregularity unwanted by the rule of law. This is following the function of sanctions used for law enforcement against provisions that usually contain a prohibition or that require (Hadjon, 1992). Thus, sanctions are essentially juridical instruments that are usually granted if the obligations or prohibitions in the provisions of the law have been violated (Djatmiati, 2004), and behind the door, the provisions of orders and prohibitions (geen verboden) are available sanctions to compel compliance (Hadjon, 1992).

The fact of sanctions as coercion under the law, also to give awareness to the infringing party, that an act that is done has not been following the
prevailing rule of law, and to return the concerned to act following the prevailing rule of law, as well as to maintain the balance of the running of a rule of law. The sanction stipulated against the Notary is also awareness, that the Notary in performing his/her official duties has violated the provisions regarding the implementation of the duties of notary positions as stated in UUJN, and to return the actions of notaries in carrying out the duties of their positions to be orderly following UUJN. Besides, sanctioning notaries is also to protect the public from Notary actions that may harm the community, such as making a deed that does not protect its rights as stated in the Notarial deed. The sanction is to maintain the dignity of notary institutions as a trusting institution because if the Notary commits an offense, it can decrease the public's trust in the Notary. Individual sanctions against notaries are mourning and a gamble in carrying out the duties of his office, whether the public will entrust the deed to the Notary in question is not. UUJN which regulates the Notary Office contains provisions that are coercive or are an imperative rule of law to be enforced against notaries who have committed violations in carrying out their duties (Adjie, 2004).

The legal sanctions in Indonesia's positive law consist of 3 types of administrative sanctions, civil sanctions, and criminal sanctions. Sanctions against Notaries are not only Civil Sanctions and Administrative Sanctions, but also sanctions against Notaries may be subject to other sanctions, namely Criminal Sanctions and Sanctions code of conduct of the Department. Criminal Sanctions will be imposed if the Notary in carrying out his/her official duties has fulfilled certain elements of a criminal offense under the Criminal Code of Law (Penal Code), and the Sanction of Conduct will be imposed if it violates the various provisions outlined in the Code of Conduct of the Notary Department. The legal consequences for notaries who commit crimes of falsifying authentic deed are.

2.1. Criminal Sanctions

Criminal liability, in foreign terms, is also referred to as Theorekenbaardheid or criminal responsibility, which affects the prosecution of the perpetrator to determine a suspect or defendant is held accountable for a crime that occurs or does not occur. Criminal liability itself is the continued objective reproach that exists in the criminal act (Mulyadi, 2010).
It can be concluded that the basic understanding of criminal law is criminal conduct and criminal liability. The formal element of a criminal act is a prohibited and criminally threatened act, whoever violates the prohibition, while the material element is against the law. The element of criminal accountability is guilt (Sianturi, 1996).

From what has been mentioned above, it can be said that the error consists of several elements, namely:

a. The ability to be responsible for the perpetrator means that the mental state of the perpetrator must be normal.

b. The inner relationship between the perpetrator and his actions, which is intentional (dolus) or ocuest (culpa): these are called forms of error.

c. There is no reason to remove the error or there is no reason to be forgiving.

The falsification of letters (valsheid in gescheriften) is outlined in Chapter XII of Book II of the Criminal Code, from Article 263 to 276, whose forms are:

a. Falsification of letters in the form of standards or basic forms (eenvoudigevalsheid in geschiften), also referred to as mail forgery in general (Article 263 of the Criminal War).


c. To enter false information into the authentic deed (Article 266 of the Penal Code).

d. Forgery of doctor's certificate (Article 267 of the Criminal War and 268KUHP).

e. Forgery of certain letters (Article 269KUHP,270 Criminal War, and 271KUHP).


g. Storing materials or objects for mail forgery (Article 275KUHP).

Chapters 272 and 273 have been revoked through Stb. 1926 No. 359 jo 429. While Article 276 does not contain the formulation of a criminal offense, it is about the provision stipulated that additional crimes may be imposed against the author who forgery of letters in Articles 263 to 268, in the form of the revocation of certain rights of a certain extent under Article 35 No. 1-4. In general, letter forgery is found in Article 263 formulated paragraph (1) "Whoever makes a false letter or forges a letter
that may give rise to a right, alliance or debt relief, or which is intended as evidence of something with the intent to use or have others use the letter as if the contents are true and not forged, threatened if the user can cause harm, due to mail forgery, with a maximum prison sentence of six years.

The falsification of letters in Article 263 consists of two forms of criminal acts, each formulated in paragraphs (1) and (2). Based on the element of his actions the falsification of verse letter (i), it is called by making a fake letter and mamalsu letter. While the falsification of letters in paragraph (2) is referred to by the use of fake letters or forged letters. Although the two forms of crime are interconnected, each stands alone, which is different tempos and locus of the crime and can be committed by the 1980s.

The Criminal Offence of Mail Forgery has violated the Notary code of conduct contained in article 3 paragraph 4 wherein the explanation of this article it is mentioned that the Notary must act honestly, independently impartially, full of responsibility, based on the laws and contents of the oath of office of notary, a Notary who commits a criminal offense of forgery he does not act honestly and surely side with a person and this has violated the provisions of the Notary Code of Conduct. Therefore, if a Notary commits a Forgery Crime he must have violated the Code of Conduct established by the Indonesian Notary Association.

UUJN regulation of a Notary in carrying out the duties of his office is proven to be a violation, then the Notary may be subject to sanctions in the form of civil sanctions, administration, and notary code of conduct. There are times when in practice it is found that a legal action or violation committed by a Notary may be subject to civil or administrative sanctions or a code of conduct, but withdrawn or qualified as a criminal offense committed by a Notary based on notary having made a false letter or forged a deed (Rahmawati, 2011).

Thus the funding of the Notary may be carried out with limitations if the (Rahmawati, 2011):

a. There is legal action from notary against the formal aspect of the deed that is intentional, aware of the competence and planned, that the deed is made before the Notary or by the Notary, together with the intercept (agreed) to be the basis for committing a criminal offense;
b. There is a legal action from the Notary in making a deed before or by the Notary which if measured under UUJN is not in accordance with UUJN; and

c. The Notary’s actions are not appropriate according to the authorized agency (to assess the actions of the Notary, in this case, the Notary Supervisory Panel).

Sanctions are an important part of the law, and every rule of law that applies in Indonesia is always sanctioned at the end of the rule of law. The burden of sanctions in Indonesia is not only contained in the form of legislation but can be in other forms of regulation, such as ministerial decisions or other forms under the law. The inclusion of sanctions in such various rules of law is an obligation that must be included in each rule of law. As Nurhidayati notary based in Banyumas thinks about the lifting of sanctions, if it is still possible for the Notary to correct the mistakes he has made it will be better if the problem can be resolved by family deliberation and not reach the realm of law.

There are five objectives of the fund - namely:

1. Retribution

   The theory of retribution considers that the prosecution is retaliation for the mistakes that have been committed so that it is oriented towards the act and lies in the event of the crime itself. This theory puts forward that the sanctions in the criminal code are imposed solely because the person has committed a crime that is an absolute consequence that must exist as a retaliation to the person who committed the crime so that the sanction aims to satisfy the demands of justice (Abidin, 2011).

   The criminal theory of retribution has existed throughout history. The best known is the Biblical commandment: "... an eye for an eye, tooth change, life for life." this theory aims for equality and equality between funding and evil so that the perpetrator must lose something as the victim experienced or suffered. As a result, the majority of the public are of the view and continue to think that the only appropriate punishment for the "person who has taken life" is the deprivation of the life of the perpetrator, so that violent crimes should be matched with corporal punishment (Hudson, 2003).

   The theory of retribution imposes and punishes only based on "reward". The perpetrators of crimes should receive a proper punishment for them taking into account the seriousness of their
crimes. This theory assumes that we all know the right thing from the wrong thing, in addition to being morally responsible for our actions (Lippman, 2010).

This theory is influenced by a retributive view, which views the indicative only as retaliation for mistakes made based on their moral responsibilities, or backward-looking views (Packer, 1968).

2. Deterrence

The theory of deterrence considers that funding is not in retaliation for the perpetrator's mistakes but as a means of achieving a useful goal to protect the community towards the welfare of the community. Sanctions are emphasized on the purpose, which is to prevent people from committing crimes, so it is not intended for absolute recruitment of justice (Abidin, 2011).

This theory is influenced by the utilitarian view, which looks at the funding in terms of its benefits or usefulness where what is seen is the situation or circumstances that the criminal wishes to produce. On the one hand, the funding is intended to improve the attitude or behavior of the convicted and on the other hand, the funding is also intended to prevent others from possibly committing similar acts.

3. Rehabilitation

The original purpose of the punishment was to reform the offender and turn him into a law-abiding member and a productive society. The difference in rehabilitation with idealistic ideas is that individuals are essentially good and can change their lives when encouraged and given support (Lippman, 2010).

The rehabilitation model recommends that sanctions should be used to change what causes perpetrators to commit crimes. These changes are the result of planned interventions (e.so, participation in drug coaching programs) and those processes include making individual changes (such as changing their attitudes and behaviors) or modifying the offender's environment and social opportunities (such as helping them get a job).

4. Incapacitation

The justification of incapacity as punishment refers to the thought that the ability of the perpetrator to commit a crime needs to be weakened or removed. "Prisons" have separated perpetrators from society, removing or reducing their ability to commit certain crimes. The death penalty needs to be carried out permanently and cannot be
overturned. In fact, in some societies, people who steal have been punished with amputations of their hands.

The purpose of incapacity is to remove perpetrators from society to prevent them from continuing to threaten others. The approach used by this theory is that there are criminal individuals who are less likely to be prevented or rehabilitated (Lippman, 2010).

5. Restoration

Restoration emphasizes the harm caused to victims of crime and requires perpetrators to engage in financial restitution and community service to compensate victims and the community and to "make them whole again." The restorative justice approach recognizes that the needs of victims are often overlooked in the criminal justice system. This approach is also designed to encourage perpetrators to develop a sense of individual responsibility and become responsible members of society (Lippman, 2010).

2.2. Civil Sanctions

In Article 84 it is determined that there are 2 (two) types of civil sanctions if the Notary commits a violation of certain articles and also the same sanctions of the same type are spread in the other articles, namely notaries can be sued and in the lawsuit, Plaintiff may request that:

a. Notarial Deed which has the power of proof as a deed under hand; or
b. Notarial Deed becomes null and void.

c. Besides, as a result of such notary deed, this can be a reason for the indemnified party to claim reimbursement, damages, and interest to the Notary.

As affirmed in Article 1365 of the Criminal War, if a person commits an Act Against the Law then he is obliged to pay compensation for his/her actions.

This is following the results of interviews with the three judges It is following the results of interviews with: M. ARIF NURYANTA, SH., MH (Chairman of Purwokerto District Court) and ARIF DIARTO, SH., MH. (Purwokerto District Court Judge, who stated that the person harmed by the criminal verdict may file a civil lawsuit by making the criminal verdict as evidence to seek damages and also request that the faked authentic deed be overturned for the sake of the law.
2.3. **Administrative Sanctions**

In Administrative Law, typical sanctions, among others (Hadjon, 1992):

a. *bestuursdwang* (government coercion);

b. withdrawal of favorable decisions (provisions) (permits, payments, subsidies);

c. the imposition of administrative fines; and

d. the imposition of forced money by the government (*dwangsom*).

Sanctions against Notaries are regulated at the end of UUJN, namely in Article 84 and 85 of UUJN, there are 2 (two) kinds, namely (Hadjon, 1992):

a. As mentioned in Article 84 of UUJN, i.e. if the Notary violates (does not perform) the provisions as referred to in Article 16 paragraph (i) letter i, k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, Article 52. If the provision stipulated in the above article is not fulfilled, then the deed in question only has the power of proof as a deed under hand or the deed becomes null and void, and it can be used as an excuse for the parties (the intercepts) listed in the deed who suffered losses to demand reimbursement of costs, damages, and interest to the Notary. The claim of the parties against the Notary in the form of reimbursement of costs, damages, and interest is the result that the Notary will receive if the deed in question only has the power of proof as a deed under hand or deed becomes null and void of the sanctions law to provide compensation, costs, and interest as in Article 84 UUJN can be categorized as Civil Sanction.

b. As stated in Article 85 of UUJN, i.e. if the Notary violates the provisions of article 7, Article 16 paragraph (i) letter to k, Article 17, Article 20 Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63 then the Notary will be punished in the form of:

a) verbal reprimand;

b) written reprimand;

c) temporary termination;

d) respectful dismissal; Dan

e) disrespectful dismissal.

The sanctions contained in Article 85 of UUJN may be categorized as Administrative Sanctions. The sanctions contained in Article 84 and
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85 of the UUJN, are sanctions against Notaries relating to a deed made before and by notaries. This means that some certain requirements or actions are not performed or not fulfilled by the Notary in carrying out their duties, in the form of obligations and prohibitions outlined in the UUJN, the Notary Code of Conduct, notary conduct that may demean the honor and dignity of the Notary.

The type of sanctions in Article 85 of UUJN can be categorized into this type of administrative sanctions, according to HD view. Van Wijk and Willem Konijnenbelt that Administrative Sanctions are a tool of public law used by the authorities in reaction to non-compliance with administrative legal norms (Wijk, 1990), i.e. temporary dismissal; respectful dismissal, and disrespectful dismissal from office. Such sanctions may be categorized as the withdrawal of favorable decisions, favorable decisions (Statutes) may be withdrawn as sanctions, if the interested do not comply with the restrictions, terms, or provisions of the legislation or the interest has provided such incorrect or incomplete data, until if the data is provided correctly or fully, then the decision will be different (Hadjon, 1992). Reprimands and oral written strikes can be categorized as one of the real coercion procedures (Bestuurdwang), a written warning must precede the real implementation of Bestuurdwang (Hadjon, 1992).

The regulation stipulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 25 of 2014 concerning the Terms and Procedures for Appointment, Transfer, Dismissal, and Extension of Notary Termination with Disrespect, is stipulated in Articles 68, 69, and 70:

a) Article 68

(1) Minister disrespectfully dismisses the Notary from office on the grounds of:
   a. declared bankrupt based on the decision of a court that has the power of permanent law;
   c. under continuous amputation over 3 (three) years;
   d. perform acts that demean the honor, dignity, and office of the Notary; and/or
   e. gross violation of the obligations and prohibitions of notary positions.

(2) Disrespectful dismissal is carried out on the proposal of the MPP to the Minister.
(3) The Central Supervisory Panel may receive reports from the public or proposals from notary organizations as well as recommendations from MPD and MPW related to the reasons as referred to in paragraph (1).

(4) The report as referred to in paragraph (3) shall be delivered in a responsible and implemented way following the provisions of the laws and regulations.

The Honorary Board is authorized to conduct an examination for violations of the code of conduct and to drop sanction to its offenders following its authority. The duties of the Honorary Board include conducting coaching, guidance, supervision, improvement, examining and making decisions on the expected improvement of internal code of conduct provisions, and providing advice and opinions to the Board of Trustees for alleged violations of the code of conduct and notary department. The Honorary Council is divided into the Regional Honorary Council (at the first level) of the Regional Honorary Council (at the appeal level) of the Central Honorary Council (at the last level).

For Notaries who commit violations of the Code of Conduct, the Honorary Board coordinates with the Board of Trustees authorized to conduct an examination of the violation and may impose Civil or Administrative sanctions on its violations, administrative sanctions imposed against members of the Indonesian Notary Association (INI) who commit violations of the Code of Conduct may be: a) Reprimand; b) Warning; c) Schorzing (temporary termination) of sorority membership; d) Onzetting (respectful dismissal) of sorority membership; e) Disrespectful dismissal of the membership of the association. The imposing of sanctions as mentioned above against members who violate the Code of Conduct is adjusted to the quantity and quality of violations committed by such members.

b) Article 69

(1) The proposal of MPP as referred to in Article 68 also contains the appointment of another Notary as the holder of the protocol.

(2) MPP proposals are submitted within a period of no later than 30 (thirty) days from the date of the report from the community or the proposal of the Notary Organization as well as recommendations from MPD and MPW received.
(3) The Minister dismisses the Notary disrespectfully and establishes another Notary as the holder of the protocol within no later than 30 (thirty) days from the receipt of the proposal.

Decisions containing the provisional dismissal (*schorsing*) or *onzetting* of the membership of the association conducted by the Honorary Council of the Territory may be submitted/requested at the last level to the Central Honorary Council, within 30 (thirty) business days after the date of receipt of the letter of sanctions from the Honorary Council of the Territory and its translucent to the Regional Honorary Council, Central Administrator, Regional Administrator and Regional Administrator. Furthermore, the Minister will establish a replacement notary to hold the interim protocol.

c) Article 70

(1) In the case of the dismissal of a Notary with disrespect for the reason of being sentenced to prison based on a court ruling that has gained the force of permanent law for committing a crime threatened with a prison sentence of 5 (five) years or more, the decision to dismiss the Notary from his position and the determination of another Notary as the holder of the protocol is determined within a period of no later than 30 (thirty) days from the date of the verdict of the court has permanent legal force.

(2) The appointment of another Notary as the holder of the protocol and the handover of the protocol shall apply the provisions as referred to in Article 67.

Notaries sentenced to less than five years may be subject to the provisions contained in Article 13 of the Notary Code of Conduct. The Code of Conduct applies to all members of the Association as well as others who hold and perform positions as Notaries, both in the implementation of the Department and daily life. Thus, if the Notary is sentenced to less than five years he may be subject to temporary dismissal as a member of the association.

This is following the results of an interview with Notary Nurhidayati, SH. Mk.N. and M. Emelia Widyanti, SH. The Sp.N. states that if a Notary commits a crime other than obtaining a criminal sanction does not cover the possibility of getting administrative sanctions from a notary organization namely INI.
In its implementation notaries who have been sentenced to less than five years are only given a temporary dismissal from their members, so that notaries who have been sentenced to less than five years still get the opportunity to run for office again. Supposedly, the arrangement stipulated against notaries who have been convicted with the threat of punishment of fewer than five years is stipulated in Law no. 2 of 2014 on Changes to Law No. 30 of 2004 on notary departments. If there are clear rules in the Law then, it will provide legal certainty to the Notary who has committed the offense.

Conclusion

As a result of the law for notaries who commit crimes of falsification of authentic deed is: in terms of criminal law, notary threatened to be convicted with the threat of article 264 criminal code on the falsification of the authentic deed with the threat of a maximum penalty of eight years in prison. Based on civil law, notaries can be sued for damages by those who feel harmed. Besides, the Notary in question may be subject to administrative sanctions from notary organizations (INI) in the form of verbal reprimand, written reprimand, temporary dismissal, respectful dismissal, disrespectful dismissal.

Suggestions

The Indonesian Notary Association should conduct continuous and continuous training, thus providing a refresher of knowledge to the old Notary and the new Notary to avoid the occurrence of violations of the law in the future, so that it is expected that in the future there will be no more cases of Notaries committing crimes of falsification of authentic deed in particular and other criminal acts in general.

References


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