

## THE DUTIES AND LIABILITY OF NOTARY AS PUBLIC OFFICIAL IN CRIMINAL LAW PERSPECTIVE

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### ABSTRACT

A notary always leads to criminal relations in their daily profession. The Notary has to the extent their precautionary principle to prevent the malpractice practice. Many regulations and the ethics code of the profession must have appropriate attention to protect their profession. Duties and Responsibilities of the Notary as a General Officer of the Criminal Law Perspective, which constitutes the scope of the parameters of the Notary's actions in his authority. With the hope that the Notary profession must maintain the integrity and nobleness in the future, the Notary will be a partner of law enforcement officers in providing the best legal services for the community.

**Keywords: Notary, Criminal Conduct, Noble Profession, Prosecutor and Investigation.**

### INTRODUCTION

A notary is a distinguished profession that must maintain its dignity and nobility. A Notary has to prioritize professionalism and integrity in carrying out his position as a public. In addition to being related to a regulation of office, also associated with the official sworn. (Adjie, Habib :2017). A Notary must keep secrecy the contents of the deed and information as regulated in Article 4 paragraph (2) UUJN, Article 170 paragraph (1) KUHPA, article 1909 paragraph (2) Civil Code, Article 322 paragraph (1) Criminal Code. However, based on the provisions in Article 54 Paragraph (1) and Article 66 Paragraph (1), it is very contradictory that a Notary Public as if can inform the contents of the deed to the third party. In carrying out his authority in doing Authentic Act, especially the authentic act, especially land rights, sometimes a Notary Public commits a wrongdoing, namely criminal conduct. The abuse of power of Notary in doing an authoritative law concerning land rights that fulfill a criminal act will lead to criminal liability. (Hall, Eamonn G: 2015).

In the prosecution process, the public Prosecutor has an authority to prosecute anyone who breaks the criminal conduct in his jurisdiction by passing the case to the court authorized to decide. This action has logical consequences, which is an absolute obligation for the public Prosecutor always to follow the development of each examination conducted by the investigator if a suspect of committing a crime to produce maximum results in prosecution. For this reason, each investigator's actions are any cases involving a notary. A witness and criminal, the Prosecutor, as the public Prosecutor, follows the investigator's path and provides instructions and determines whether the case is appropriate for immediate prosecution. The presence of the Constitutional Court Decision Number 49 / PPO-X / 2013 dated May 28, 2013, decided to grant the judicial review request Article 66 paragraph (1) of Law no. 30 of 2004 concerning the Position of Notary submitted by Kant Kamal. In its decision, the Constitutional Court overturned the phrase "with the approval of the Regional Supervisory Council" in the article is still debatable. Thus, an examination of legal proceedings involving notary officials does not need the approval of the Regional Supervisory Council (MPD). Before the investigation, the Notary public Prosecutor or judge must be aware of authorized by the Regional Supervisory Council. Article 66 paragraph 1, regulate Notary in the process of investigation: "For the benefit of the judicial

process, the investigator, public Prosecutor, or judge with the approval of the Regional Supervisory Board has the authority to (a) take a photocopy of the Minutes of an authentic act or Notary Protocol in notary storage, and (b) call for a notary to attend the examination relating to the deed he made or the Notary Protocol which is in the Notary's depository."

The Constitutional Court stated that the judicial process to take documents in the storage of a notary public and summon a notary to attend the examination relating to the documents he made did not need to seek MPD approval. The approval procedure is contrary to the principle of equal protection as guaranteed by the 1945 Constitution. Thus, the Notary who has carried out its function correctly in making Authentic Deed certainly does not want to be treated arbitrarily by law enforcers in the investigation, investigations, and prosecution process. This prudence is one of the requirements of researching a case, the Chief Prosecutor's Office of the Prosecutor, as the Public Prosecutor to carefully examine the formal and material requirements before being convinced the case is worthy of being brought to court. General's Regulation 2011 on Standard Operating Procedure (SOP) for handling cases of general criminal acts and Circular Letter 2009 on coordination with investigators is necessary to conduct case research; a prosecutor must pay attention to both formal and material completeness.

### **CONCEPTUAL FRAMEWORK**

The function of authentic deed as the most substantial and most complete evidence is vital in every legal relationship in people's lives. In various business relationships, activities in banking, defense, and social activities, the provisions for written proof in the form of authentic deeds are increasing in line with the growing demands for legal certainty in various economic and social relations, both at the national and regional levels and global. (Anand, Ghansham: 2018). Through an authentic deed, which determines rights and obligations, guarantees legal certainty, and at the same time, is expected to avoid disputes. However, the dispute must make aware of the process of resolving the conflict. This authentic act is the most reliable written instrument and a real contribution to the settlement of the case.

From the definition and function of the authentic deed mentioned above, it is clear that a notary is independent in that there is no interest in an authentic act. They understand that the interests of the parties and the statements of the parties. The parties' comments in an authentic deed certainly do not necessarily release the responsibility of a notary to examine and examine the information provided by the parties. Notaries as "public officials" who have adequate intellectual qualities and not merely "craftsmen" or "clerks" must also be obliged to uphold the principles of "good governance" or general principles of proper administration. This administration includes principles namely; (Salim, 2018):

1. prioritize legal certainty;
2. the orderly administration of the state;
3. public interest;
4. professionalism;
5. proportionality,
6. efficiency, effectiveness, and accountability.

Based on this, a notary should not encourage, assist, or participate in providing incorrect information in an authentic act. What is also notable about the legal relationship between the Notary and the parties is a unique legal relationship, with the character:

1. There is no need to agree either verbally or in writing in the form of authorization to do a deed or to do specific jobs;
2. The Notary can help formulate the wishes of the parties in writing in the form of an authentic act;
3. The final result of the Notary's action must consider the Notary Public's authority, which comes from the request or desire of the parties themselves; and
4. A notary is not a party to the deed concerned.

As a public official, the Notary in carrying out his authority must be under the general principles of good governance, namely:

1. The principle of equality;
2. The principle of trust;
3. Principle of legal certainty;
4. The principle of accuracy;
5. The principle of giving reasons;
6. Prohibition of abuse of power; and
7. Prohibition of arbitrariness.

### **DISCUSSION**

The civil law above confirms the relationship between the parties bound by a contract, which, if it is under the terms of an agreement, the agreement becomes valid. A notary must ensure that an agreement has fulfilled the conditions so that it does not imply an infringement. From the construction of civil law above, if in an authentic act making a notary pays attention to and refers to the legal relationship with the parties involved and pays attention to the principle of accuracy. The legal authority of a notary cannot be withdrawn automatically in criminal conduct. Efficiency in making Authentic Deed not only releases a Notary Public to legal issues that will befall him, but also to the parties to the authentic act. Therefore, caution and high integrity are requirements, considering that there are currently many cases such as defense, which are often for the Notary as a witness or even a suspect. If in carrying out his authority as a Notary under applicable regulations, there is no need to worry that law enforcers will mistreat him. In this case, prosecutors certainly have their parameters in determining the quality of Notary acts, whether entering the criminal domain or not. In exercising its authority, a prosecutor must be aware of evidence and legislation.

### **CONCLUSIONS**

A prosecutor and a notary believe that their profession is a noble profession, so they would not do unequalled importance conduct for its influence upon the minds and morals of the people. Honesty and trust are central to their profession's integrity. The belief in maintaining that integrity is like an evergreen tree with a thousand roots that will not shake no matter how large and high the wind blows, remains firmly standing to bring fresh air to life around it. For this reason, there is no need to be "paranoid" or afraid of carrying out the functions of the function as a Notary because they have worked within the frame of professionalism and integrity. Please get to know the law away from punishment, provide legal certainty for the community through our shared role.

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