JURISPRUDENSI
Jurnal Ilmu Syari'ah, Perundang-undangan dan Ekonomi Islam
https://doi.org/10.32505/jurisprudensi.v15i1.5635
Vol. 15 No. 2 (Februari-Juni 2023): 58-70

The Urgency of Applying Article 39 paragraph (2) UUJN Against Prevention of Indications of Criminal Acts in Notary Deeds

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Abstract

Notaries are authorized to make authentic deeds (Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary). A notary has the potential to be entangled in criminal law, if it is proven that intentionally or unintentionally the Notary together with the parties / interceptors to make a deed with the intention and purpose of benefiting one party and harming the other party. This study aims to examine the urgency of applying Article 39 paragraph (2) of the UUJN to the prevention of indications of criminal acts in notarial deeds. The research method used is the normative juridical method, which is carried out by analytical descriptive analysis. The results of the study concluded that notaries cannot be held liable when the element of fraud and mistakes is committed by the confronters, because the Notary only records what is submitted by the parties to be poured into the deed (partij deed). False statements submitted by the parties are the responsibility of the parties. With regard to the actions of notaries who commit criminal acts of forgery of deeds or criminal acts of false information committed by the parties, UUJN does not specifically regulate related to criminal provisions because it is based on the principle of legality which is the principles in the Criminal Code.

Keyword: *Urgency, Article 39 paragraph (2) UUJN, Crime, Notary Deed*

Abstrak

Notaris berwenang untuk membuat akta otentik (Pasal 15 ayat (1) Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris). Notaris berpotensi terjerat hukum pidana, apabila terbukti bahwa secara sengaja atau tidak sengaja Notaris bersama-sama dengan para pihak/penghadap untuk membuat akta dengan maksud dan tujuan untuk menguntungkan salah satu pihak dan merugikan pihak lainnya. Penelitian ini bertujuan untuk meneliti urgensi penerapan Pasal 39 ayat (2) UUJN terhadap

pencegahan indikasi tindak pidana dalam akta Notaris. Metode penelitian yang digunakan adalah metode yuridis normatif, yang dilakukan dengan analisa deskriptif analitis. Hasil penelitian menyimpulkan bahwa notaris tidak dapat diminta pertanggungjawaban ketika unsur penipuan dan kesalahan tersebut dilakukan oleh para penghadap, karena Notaris hanya mencatat apa yang disampaikan oleh para pihak untuk dituangkan ke dalam akta (partij akta). Keterangan palsu yang disampaikan oleh para pihak adalah menjadi tanggung jawab para pihak. Berkaitan dengan tindakan notaris yang melakukan tindak pidana pemalsuan akta atau tindak pidana keterangan palsu yang dilakukan oleh para pihak, UUJN tidak mengatur secara khusus terkait dengan ketentuan pidana karena berdasarkan pada asas legalitas yang merupakan prinsip-prinsip dalam KUHP.

Kata Kunci: Urgensi, Pasal 39 ayat (2) UUJN, Tindak Pidana, Akta Notaris

Introduction

In social life there are many traffic events that occur, thus creating a connection between individuals with one another. The relationship created by each individual certainly carries an interest that has been agreed upon, with an impact in the future. The interests include the rights and obligations of each individual who builds relationships with each other. From a legal point of view, this is part of the scope of civil law, which regulates private law relations, namely related to the rights and obligations of individuals as legal subjects who are declared competent to act legally.

In order to protect the interests brought by each legal subject in entering into a legal contractual relationship, from the point of view of law, it requires the existence of a form of agreement that is stated in writing. As for the form of a written agreement, it can be used as evidence of an agreement made. One form of a written agreement that is strongly stated as evidence is an authentic deed, grammatically the deed is interpreted as a letter of evidence containing statements (statements, confessions, decisions, etc.) about legal events made according to applicable regulations, witnessed and ratified by official (Irma Devita Purnamasari, 2015).

However, before discussing the authentic deed, it is first understood that there is a legal principle which is the basis for everyone to be able to enter into an agreement. The legal principle, namely the principle of freedom of contract, according to M Faiz Mufidi in Lina Jamilah, (Lina Jamilah, 2012) states that everyone has the freedom to bind himself to other people. Juridically, the principle of freedom of contract can be seen in the provisions of Article 1338 paragraph (1) of the Civil Code, which states that "all agreements made legally apply as laws to those who make them."

In connection with an authentic deed, based on the principle of freedom of contract, it has the consequence that everyone is free to enter into an agreement, and in that agreement it has become a law for those who make it. That is, everyone who is bound by an agreement made must submit and obey to carry out what was promised, obedience is equated with obeying the law. As for the party authorized

to make authentic deeds, namely the Notary, based on Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Office of a Notary, states that "Notaries, in their position, have the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or what is desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all of that as long as the making of the deed is not also assigned or excluded, to other officials or other people determined by law.

Even though juridically there is a principle of freedom of contract which guarantees that everyone has the right to freely enter into an agreement, this freedom still has limitations as long as it does not conflict with the norms that live in society or laws and regulations. The function of an authentic deed made by a Notary is not only used as evidence of an agreement, but moreover an authentic deed can also be used as evidence in court when there is a dispute regarding violations committed by one of the parties bound in an authentic deed agreement.

In carrying out their duties, based on Article 16 paragraph (1) letter b UUJN, the Notary is given the obligation to keep the deed in the form of minutes of the deed and keep it as part of the Notary Protocol. This obligation aims to maintain the authenticity of the deed by keeping the deed in its original form, so that if there is falsification or misuse of the grosse, the copy or quotation can be easily identified by matching it with the original.

According to Abi Jam'an Kurnia, if a Notary violates the provisions of Article 16 paragraph (1) letter b UUJN, (Abi Jam'an Kurnia, 2019)then it can be said to have committed a serious violation and therefore can be subject to sanctions in the form of dishonorable dismissal from position by the Minister of Law and Human Rights on the recommendation of the Central Supervisory Council. As for the existence of the Supervisory Council, namely to carry out guidance and supervision of Notaries, this is as stipulated in Article 1 number 6 UUJN. The oversight task through the establishment of a Supervisory Council is regulated in Article 67 paragraph (2) UUJN, which states that in carrying out supervision, the Minister forms a Supervisory Council.

Structurally, based on the provisions of Article 68 UUJN, the Supervisory Council consists of three parts, namely the Regional Supervisory Council, Regional Supervisory Council and Central Supervisory Council. Each position of the Supervisory Council is based on its territory or supervisory space, starting from the Regency/City, Province to the central level. Regional Supervisory Councils are formed in Regencies/Cities, as stipulated in Article 69 paragraph (1) UUJN. Furthermore, the Regional Supervisory Council is formed and domiciled in the provincial capital, as stipulated in Article 72 paragraph (1) UUJN. And the Central Supervisory Council was formed and domiciled in the national capital, as stipulated in Article 76 paragraph (1) UUJN.

As for those authorized to impose sanctions on Notaries who violate the code of ethics, namely at the level of the Central Supervisory Board. This has been regulated in Article 77 letter a UUJN, which states that the Central Supervisory Council has the authority to hold hearings to examine and make decisions at the appeal level against imposing sanctions and refusing leave. With the supervisory role carried out by the Supervisory Council, it can be said that it is a manifestation

of the establishment of a legal system in the notary sector. So that from the legal system, it is expected to be able to maintain the dignity of the Notary profession in carrying out his duties based on the applicable laws and regulations.

Notaries are not only bound by laws and regulations in the civil field, but are also bound by statutory provisions in the criminal field. If there are indications of fraud or forgery of deeds, the Notary can be charged with Article 263 of the Criminal Code (KUHP). These provisions read as follows:

> "(1) Whoever makes a fake letter or falsifies a letter that can give rise to a right, agreement or debt relief, or which is intended as evidence of something with the intention of using or ordering other people to use the letter as if the contents were true and not forged, shall be punished if said use causes harm, due to forgery of documents, with a maximum imprisonment of six years. (2) By the same punishment shall be punished any person who deliberately uses a forged or forged document to pretend it is real, if the use of said letter can cause harm."

Therefore, in order to avoid forgery of documents (authentic deed), Notaries are provided with promises or professional oaths of office as emphasized in Article 4 paragraph (2) UUJN, which in essence gives a moral obligation to Notaries to act in a trustworthy, honest, thorough, independent and not take sides in carrying out their duties to make an authentic deed. Because an authentic deed is a perfect proof, it is not uncommon for an authentic deed to be used as evidence in court. With regard to the authentic deed which was used as evidence in court, Fuad Brylian Yanri described it as follows:

> The number of authentic deeds made by a notary is used as evidence in court, because an authentic deed made by a notary gives everyone the right to do or own something, so that everyone has the authority to do or not do something. In fact, it is not uncommon for a Notary to be summoned to be a witness by a court for an authentic deed he has made. Notaries must be able to create legal certainty for notary service users. A notary has the potential to be entangled in criminal law, if it is proven that intentionally or unintentionally the notary together with the parties/appearers made a deed with the intent and purpose of benefiting one party and harming the other party (Fuad Brylian Yanri, 2019).

If a Notary accidentally makes an authentic deed that indicates a crime, the provisions of Article 39 paragraph (2) of the UUJN have emphasized the initial stages of a Notary in making a deed, namely "The Appearer must be known by the Notary or introduced to him by 2 (two) persons identification witnesses who are at least 18 (eighteen) years old or married and capable of carrying out legal actions or introduced by 2 (two) other appearers." From the provisions of the article, that a Notary must really know his client, because if he already knows the potential to know the interests of his client is greater, and coupled with the presence of two witnesses will strengthen the clarity of the interests that will be poured into the form of a Notary deed.

In addition, the Notary must know the identities of the appearers by ordering the appearers to submit the documents or letters needed to be included in the deed. Rahmad Hendra in Dea Derika, states that the document that must be

requested by a Notary to attach a copy of the Minutes of the Deed (original Notary Deed) is an identification card or Identity Card (KTP). The notary must ensure that the appearer uses the original identity in the deed made (Dea Derika, 2020).

Based on Article 40 UUJN, it stipulates that every deed read by a Notary is attended by at least 2 (two) witnesses, unless the laws and regulations state otherwise, witnesses must meet the requirements, namely at least 18 (eighteen) years old or married, capable of acting by law, understand the language set forth in the deed, can sign and do not have marital relations or blood relations in a straight line up or down without limiting degrees and lines to the side up to the third degree with the Notary or the parties.

Literature Review

The material on protection against potential criminal acts in notary deeds is not a new study, there are already several researchers who peel it with various concepts and methods. Likewise, the discourse on the implementation of local regulations that discuss these dimensions. Nyoman, et al., in their work entitled; *"Sanksi Bagi Notaris Dalam Hal Terjadinya Pelanggaran Ketentuan Pembuatan Akta Autentik,"* has explained very well how notaries are subject to imprisonment when violating the provisions that have been garsed. The crime can be in the form of imprisonment of about 2 months, plus other losses if any. This research has similarities with what the author studied, especially in discussing UUJN and notaries (Wardana. 2022). As for what is confusing, if Nyoman positions the notary as a party who has committed a criminal act, the author's article formulates a solution offer before the criminal action occurs. In short, if Nyoman packages research that is 'judgmental' in nature, the author is still in the area of 'prevention'.

Nur Cahyanti, et al., in their journal entitled; *"Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia,"* has described very disturbingly how the sanctions threaten and ensnare notaries who are proven to have committed criminal acts such as; Forgery of deeds (fictitious deeds), information in deeds, legalization, waarmerking, matching photocopies, and signatures, and embezzlement (Cahyanti, 2022). However, Cahyanti's work emphasizes more variations in the law that will ensnare notaries according to the level of guilt in committing criminal acts. In contrast to what the author does which focuses on aspects of criminal prevention that are potentially carried out by notaries.

Yuni Setiawati, et al., in a study entitled; *"Notaries at Risk: Urgent Need for Legal Protection Against Criminal Acts,"* have assembled various research findings so that they become an interesting and systematic scientific work. The work revitalizes the importance of legal harmonization between notary law and criminal law so as to minimize risks for notary actors (Setiawati, 2023). However, the article above only focuses on the position of notaries who are at risk of becoming criminal victims, in contrast to the author's research which is actually oriented towards the realm of prevention of criminal acts by notaries as criminal offenders.

Some of the literature studies above, and supported by other literacy, so far have not found similarities between what the author discusses and previous publications. Shows that the author's article has a distinction and novelty.

Research Methods

The author uses a type of doctrinal legal research (doctrinal *research*), namely research that provides a systematic presentation of the regulations governing certain legal categories, analyzes the relationship between regulations, explains areas that experience obstacles, and even predicts future developments. Types and sources of legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials: Law Number 2 of 2014 concerning the Position of Notary. In general, the technique of collecting legal materials is through literature study and of course involves scientific reasoning activities on the legal materials being analyzed, using both inductive and deductive reasoning.

Application of Article 39 paragraph (2) UUJN in Preventing Indications of Criminal Acts in Notarial Deed

The authority of a Notary to make an authentic deed is based on the provisions of Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. In the context of evidentiary law, having an authentic deed drawn up before a Notary as a public official authorized to make authentic deed can create a form of legal certainty and become a means of evidence in the judicial process if there is a dispute regarding the authentic deed made. As for proof in civil law, it is regulated in Article 1866 of the Civil Code (KUH Perdata), including: Written evidence, witness evidence, predictions, confession, and oath.

According to Komar Andasasmita, writing that is made specifically to be a valid and accurate piece of evidence is called a deed (*acte*). A deed is a special writing made to be a written evidence (Komar Andasasmita, 1981). There are several conditions related to a deed that is declared authentic, this has been described by Missariyani by quoting Article 1868 of the Civil Code, as follows: (Missariyani, 2016)

a) The deed must be drawn up by or in the presence of a public official and therefore in conjunction with the Notary's deeds regarding the act of agreement and stipulation.
b) The deed must be in the form determined by law, thus if it is not in accordance with what is determined by law, it can be threatened with losing its authenticity.

Authentic deed is included in the document evidence section in civil procedural law, this is as described by M. Yahya Harahap who divides three documentary evidence, namely authentic deed, private deed and unilateral deed or unilateral confession (M. Yahya Harahap, 2015). From the classification of the evidence, all three are legal products made by a notary based on their duties as

stipulated in UUJN. The authority of a Notary to make all kinds of deeds related to civil law relations, aims to create legal certainty, which is oriented towards proof and can be used as evidence in civil procedural law if the deed is desired by the parties to be used as evidence in court.

Thus, the presence of an authentic deed as a form of legal certainty related to evidence, is a series of existing legal systems in Indonesia. With regard to the legal system, explained by Lili Rasjid, (Lili Rasjidi & Liza Sonia Rasjidi, 2012) that in order to create a just order, law is a means that manifests in various rules of social behavior called the rule of law. The entire positive legal rules that apply in a society are arranged in a system called the legal order. The existence and functioning of the legal system with its legal principles and enforcement is a product of human struggle in an effort to overcome life's problems.

As for the legal system in the context of an authentic deed as formal proof of the existence of a legal event, the UUJN regulates the rules in making a deed before a Notary in the form of conditions that must be fulfilled by appearers, namely giving an obligation to a Notary to know the identities of appearers and requesting data or supporting documents related to the deed to be made, this has been regulated in Article 39 UUJN which regulates the requirements of the appearers, as follows:

1) The appearer must meet the following requirements:
   a) At least 18 (eighteen) years old or married; And
   b) Capable of carrying out legal actions.
2) The appearer must be known by the Notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of performing legal actions or introduced by 2 (two) other appearers;
3) The recognition as referred to in paragraph (2) is expressly stated in the deed.

With respect to the position of the appearers, it has been regulated in Article 38 paragraph (3) letter b UUJN, which basically regulates information regarding the position of the appearers to act. In making an authentic deed, a Notary must pay attention to the acting position of the appearers so that they can clearly know the object of the agreement that will be put into the form of an authentic deed. Based on the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning Application of the Principle of Recognizing Service Users for Notaries, namely Notaries are required to apply the principle of recognizing Service Users which at least contains identification of Service Users, verification of Service Users and monitoring of Service User Transactions.

This regulation is still a problem in the field for Notaries to implement this regulation. The Notary believes that the Notary is not responsible for the material truth of what was agreed by the Parties. According to Freddy Haris and Leny Helena, it is important to read the deed, meaning that the parties who sign and witness the birth of the deed are fully aware of the things that were agreed upon and stated and know the legal consequences (Freddy Haris & Leny Helena, 2017).

On the other hand, as a form of guaranteeing privacy protection for appearers, in their oath or promise of office, the Notary must also keep confidential

the contents of the deed and the information obtained in making the deed made by the appearers. This oath or promise of office is regulated in Article 4 paragraph (2) UUJN, which states as follows:

> *"I swear/promise: That I will obey and be loyal to the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary Public and other laws and regulations. That I will carry out my position in a trustful, honest, thorough, independent and impartial manner. That I will maintain my attitude, behavior, and will carry out my obligations in accordance with the professional code of ethics, honor, dignity and my responsibilities as a Notary. That I will keep the contents of the deed and information obtained in the exercise of my position confidential. That in order for me to be appointed to this position, either directly or indirectly, under any name or pretext, I have never and will not give or promise anything to anyone."*

From the notary's oath or promise of office above, in carrying out his duties a notary is bound by laws and regulations and the notary code of ethics. Morally, a Notary is required to be able to act trustworthy, honest, thorough, independent and impartial. In making an authentic deed, a Notary may not side with one of the parties in the deed he made. If there are several parties in the deed, the Notary should prioritize all the interests of the parties in an authentic deed.

With regard to morality related to the trust and honesty of a Notary, if the statement submitted by the appearer contains false information or the document given to the Notary contains false documents without the knowledge of the Notary, then the deed and binding made before the Notary by means of formal evidence contain the truth, however the fact of forgery submitted by the appearer is not the authority and responsibility of the Notary so that material truth cannot be proven. This is because the Notary cannot guarantee the truth that the parties who have an interest in making the deed have correctly provided information and data. Thus, if there is a problem of identity forgery contained in the Notary's deed, the Notary is not responsible for the forgery (Dea Derika, 2020).

In connection with the above, M. Yahya Harahap explained that the authenticity of a deed in terms of the legal proof of writing, the deed has a function as a causal formality and as evidence so that this function will be legally null and void if the deed made by a notary does not have perfect evidentiary power (M. Yahya Harahap, 2008).

Application of the Precautionary Principle in Making Deeds

The provisions of Article 39 paragraph (2) UUJN which require a Notary to know the appearers must be applied by a Notary before the deed is made, this article emphasizes that a Notary is not arbitrary to make an authentic deed even though he has been given the authority to make an authentic deed. However, the notary's negligence in making an authentic deed cannot be completely avoided even though he has known the appearers. If the notary is negligent in drawing up the deed, so that the deed he made creates a criminal act, then the notary must also take responsibility for the deed he has made.

Criminal law problems within the scope of a Notary's duties, can be caused by a Notary's lack of caution in making authentic deeds, especially on the data of appearers regarding the subject and object to be included in an authentic deed, so that it is not uncommon to cause criminal acts in the form of falsification of documents or false statements made by the appearers in an authentic deed drawn up by a Notary. In the context of intent or negligence in criminal law, Moeljatno explains as follows:

> *"Deliberation is an act that is realized, understood and known as such, so that there is no element of misunderstanding or misunderstanding. Meanwhile, negligence is the occurrence of an act because it was never thought that there would be a consequence caused by not paying attention to it."* (Moeljatno, 1993)

Several cases of notaries in making deed deemed legally flawed, the cause is a lack of knowledge and attention to applicable legal regulations. A Notary who acts on the basis of an element of intent that has been planned in good faith and is aware of harming the appearers, is very rare to find even though the possibility of such a case definitely exists, so that in this case one form of Notary's mistake is ignorance and incomprehension or negligence of a Notary in making an authentic deed.

According to Ida Bagus Paramaningrat Manuaba, (Ida Bagus Paramaningrat Manuaba, 2017)states that the forms of *prudentiality principle* that should be carried out by a notary in the process of making a deed are to introduce the identity of the appearer, carefully verify subject and object data. appearers, give a grace period in preparing the deed, act carefully, meticulously and meticulously in the process of working on the deed, fulfill all technical requirements for making the deed and report if there is an indication of money *laundering* in transactions at a notary, forms of the principle of prudence Caution like this should be carried out by a notary so that later the notary can prevent the emergence of legal problems with authentic deeds he made in the future.

Technically in the field, the application of the precautionary principle in making authentic deeds, was explained by Fikri Ariesta Rahman who conducted an interview study with Notary and Central Supervisory Board Hendrik Budi Untung, SH, MM, (Fikri Ariesta Rahman, 2018) which stated that the application of the principle the notary's prudence in knowing the appearers begins with every deed must always ask for the original document, then it is adjusted to the legal action to be carried out, the legal consequences and the solution. Then check and match the documents shown by the appearer. Carry out legal actions in terms of making deeds in accordance with Notary operational standards, making them in accordance with applicable procedures.

A Notary who makes a mistake in recognizing the identities of appearers in the form of propriety, thoroughness and prudence obliges everyone in fulfilling his interests to pay attention to the interests of others. The fulfillment of one's interests must be carried out in such a way that it is not harmful to the interests of the appearers. A notary who is detrimental, for example making a deed that does not protect the rights of the appearers as contained in the notary's deed. The sanction is the loss of trust in the Notary, while the sanction for violating the law by the Notary if there are appearers who file a lawsuit depends on the judge's

decision. If one of the appearers is harmed due to the fault and negligence of the Notary, then the appearer can ask for compensation (Fikri Ariesta Rahman, 2018).

Bayu Rushadian further explained legal remedies that can be taken by parties who feel disadvantaged as a result of the Notary's carelessness, (Bayu Rushadian Hutama, 2012), that is, if there are parties who feel disadvantaged due to the notary's carelessness in carrying out his position, then that party can claim compensation, costs, and interest by filing a lawsuit to the district court. Meanwhile, other legal remedies are reporting to the Regional Supervisory Council so that the Notary concerned is subject to sanctions.

If it is proven that the Notary was negligent and accidentally made an authentic deed which indicated a crime, then in criminal law there is the term excuse. According to Sjaifurrahman, excuses for forgiveness are reasons that erase mistakes that have been committed (acts against the law), in such cases there are no wrong actions that can result in being held accountable to the perpetrators (Sjaifurrahman, 2011). With excuses, it can be used against a Notary's negligence in making an authentic deed that indicates a crime. This is based on the notary's negligence and accident so that it can be considered that there is no fault of a notary.

In the UUJN provisions and the Notary Code of Ethics, it does not regulate the criminal responsibility of a Notary for the deed he made if it is proven that he has violated criminal law. UUJN provisions only regulate civil and administrative legal sanctions. The Law on Notary Office stipulates that when a Notary in carrying out his position is proven to have committed a violation, the Notary may be subject to sanctions or be subject to sanctions, in the form of civil, administrative and ethical sanctions, but does not regulate criminal sanctions. In practice it is found that the violation of the sanction is then qualified as a crime committed by a Notary. These aspects include: (Enggarwati, 2015)

a) Certainty of day, date, month, year and facing time;
b) The parties (who are) who appear 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 were not completely signed, but the minutes of the deed were issued.

M. Yahya Harahap describes the form of responsibility of a Notary in making authentic deeds that indicate a crime, as follows:

> *"The notary concerned cannot be held accountable when the element of fraud and error is committed by the appearers, because the notary only records what the parties submit to be included in the deed, this is often known as partij deed. False statements submitted by the parties are the responsibility of the parties. That is, a notary is only responsible when the fraud originates from the will and/or desire of a notary. In the UUJN which regulates sanctions for violations committed by a notary, namely a deed made by a notary does not have the power as an authentic deed but only has the power as an underhand deed. In connection with the actions of a*

notary who committed the crime of forging a deed or a criminal act of false information committed by the parties, UUJN does not specifically regulate criminal provisions because it is based on the principle of legality which is the principle in the Criminal Code." (M. Yahya Harahap, 2000)

As for the legal consequences of a Notary's deed that does not apply the precautionary principle in knowing the appearers, this can be done by looking at the legal actions first. If an error is made by the appearers, then the legal consequences of the deed made can be relegated to a private deed. This is as described by the Notary and the Central Supervisory Board Hendrik Budi Untung, SH, MM in Fikri Ariesta Rahman, (Fikri Ariesta Rahman, 2018) that the legal consequences of a notary not applying the precautionary principle in getting to know appearers is to see beforehand legal actions which will be carried out by the appearers.

If the person who says he is present is not the person actually facing the Notary's office, then the deed can be degraded. The notary is not responsible for fake documents and errors shown by the appearer. An authentic deed becomes degraded into a deed under the hand, namely an authentic deed experiences a decrease in quality or decline or a decline in status, in the sense that its position is lower in strength as a means of evidence, from the strength of complete and perfect evidence to the beginning of proof such as a deed under the hand and can have defects law that causes the cancellation or invalidity of the deed.

If in the process of making the deed an error is made by the appearer and it is contrary to the applicable legal rules, then the authentic deed may be null and void and can be canceled through a judge's decision. Meanwhile, the legal consequences of a Notary who is proven not to apply the precautionary principle in knowing the appearers are subject to administrative sanctions in accordance with the Notary Office Law and may be subject to civil sanctions such as compensation or criminal sanctions such as imprisonment, if indeed the notary is proven to have made a mistake then it is wrong one appearer who is harmed can ask for civil liability, namely compensation, which can then be held criminally responsible through a court decision and the appearers can ask for compensation.

The difference between the degradation of a deed and the annulment of a deed is that if it is declared null and void by a judge, then an authentic deed is deemed to have never existed. Notarial deed is null and void, i.e. as a result the legal action taken has no effect since the occurrence of said law or retroactive, null and void based on a court decision that has permanent legal force. While it can be canceled as a result the legal action taken has no legal consequences since the cancellation occurred and where the cancellation or legal action depends on a particular party, which causes the legal action to be canceled. Deeds whose sanctions can be canceled remain valid and binding as long as there is no court decision that has permanent legal force to cancel the deed (Fikri Ariesta Rahman, 2018).

In order to seek material truth regarding the identities of appearers, a Notary is not charged by the Notary Office Law, but to apply the precautionary principle in identifying appearers. Therefore, a Notary is required to seek material truth, this aims so that the deed he makes does not become a deed that becomes a problem and harms appearers in the future. In addition, in order to avoid criminal

sanctions in the form of falsification of deeds, both committed by the appearers and negligence by the Notary himself. So that in this way, it becomes a burden on the morality of a Notary in carrying out his duties, not only to receive information from the parties and then draw up the deed, but also to pay attention to moral factors related to safety, honesty and impartiality as the oath or promise of his position as a Notary has been said before carry out duties as a Notary.

Conclusion

Basically, the Notary cannot be held accountable when acts of fraud and errors are committed by the appearers, because the Notary only records what the parties submit to be included in the deed. The false statements submitted by the appearers are the responsibility of the appearers themselves. A notary is only responsible if the fraud originates from the will and/or desire of a notary. The provisions of Article 39 UUJN paragraph (2) UUJN relating to the requirements of appearers are formal requirements to be able to prevent indications of a criminal act in a deed made by a Notary, because this provision requires that appearers must be at least 18 (eighteen) years old or married and capable of performing legal acts. The appearers must also be known by the Notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of carrying out legal actions or introduced by 2 (two) other appearers who will be explicitly stated in deed.

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