

EFFORTS TO PREVENT INDICATIONS OF CRIMINAL ACTS IN NOTARIAL DEEDS THROUGH THE APPLICATION OF ARTICLE 39 PARAGRAPH (2) OF THE UUJN; CRIMINOLOGY STUDIES

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Abstract

Indications of criminal acts by notaries as state public officials are rife in Indonesia. The existence of notary authority in terms of making authentic deeds continues to reap the spotlight ranging from allegations of forgery of letters, embezzlement, money laundering and false information. This study aims to determine efforts to prevent indications of criminal acts in notary deeds through the application of article 39 paragraph 2 of the UUJN. The type of research used is a literature study with a normative juridical approach. The results showed that Article 39 paragraph 2 of the UUJN was placed as an important instrument in preventing indications of criminal acts in the authority to make notary deeds, the existence of Article 39 paragraph 2 of the UUJN places notaries on objects that are able to act legally by providing formal certainty for authentic deeds made without causing indications of criminal acts. Procedurally, the application of Article 39 paragraph 2 of the UUJN in the prevention of criminal acts is carried out through the precautionary and systematic principle by requiring notaries to know the facing parties and also pay attention to other aspects including certainty of the day, date, month, year and time of face, signatures, copies of deeds, and minutes of deeds issued. In addition, the roles and responsibilities of notaries in making deeds based on Article 39 paragraph 2 of the UUJN include civil responsibility, code of ethics responsibility, administrative responsibility and criminal responsibility.

Keywords: Prevention; Criminal; Notarial Deed; Criminology

INTRODUCTION

Indonesia is a legal state guided by The Five Principles and the 1945 Constitution. Through these guidelines, Indonesia guarantees order, certainty, and legal protection for

every citizen.¹ The concept of good law enforcement is regulated in written rules to obtain legal certainty for citizens.² Authentic written evidence is needed regarding agreements, stipulations, actions, and legal events to ensure legal protection and order made by authorized officials. The evidence made by an authorized official is called a deed.³

One of the officials or parties with the right to make a deed is a Notary. In carrying out their duties, Notaries are based on statutory regulations, often referred to as the Notary Office Act Number 2 of 2014 Jo. Law Number 30 of 2004.⁴ Among the main tasks of a Notary is to make authentic deeds whose making is regulated by legislation and the wishes of certain people and legal entities that require authentic deeds.

Article 1870 of the Indonesian Civil Code states that an authentic deed provides an absolute agreement for the parties who make it. Thus, the Notary's position is important in the authority to make instruments or tools of absolute proof that are considered correct. The position of a Notary is required by the rule of law to serve the public who need authentic written evidence regarding legal events or actions. Therefore, a Notary must have a passion for serving the community.⁵

The precautionary principle is a principle that states that Notaries, in carrying out their functions and positions, are obliged to apply the precautionary principle in order to protect the interests of the people entrusted to them. The lack of caution of a Notary when making an authentic deed against the parties' data related to the subject or object under the parties to make an authentic deed causes criminal acts such as document falsification.

¹ Atika Thahira, "Penegakan Hukum Administrasi Lingkungan Hidup Ditinjau Dari Konsep Negara Hukum," *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 260-74, <https://doi.org/http://doi.org/10.33760/jch.v5i2.229>.

² R A S Hernawati and Joko Trio Suroso, "Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law," *Jurnal Ilmiah Manajemen, Ekonomi, & Akuntansi (MEA)* 4, no. 1 (2020): 392-408, <https://doi.org/https://doi.org/10.31955/mea.v4i1.557>.

³ Dalilah Agustiani H Sugandi and Aju Putrijanti, "Analisis Terhadap Pelanggaran Kode Etik Notaris Dalam Pembuatan Akta Jual Beli," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 1 (2023): 59-71, <https://doi.org/http://dx.doi.org/10.24269/ls.v7i1.6073>.

⁴ Elina Dyah Yulianti and Tunggul Anshari, "Pertanggungjawaban Hukum Bagi Notaris Dalam Membuat Akta Otentik Perspektif Pasal 65 Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 6, no. 1 (2021): 45-54, <https://doi.org/http://dx.doi.org/10.17977/um019v6i1p45-54>.

⁵ Fikri Ariesta Rahman, "Penerapan Prinsip Kehati-Hatian Notaris Dalam Mengenal Para Penghadap," *Lex Renaissance* 3, no. 2 (2018): 423-40, <https://doi.org/https://doi.org/10.20885/JLR.vol3.iss2.art11>.

The forms of prudential principles that should be carried out by a Notary in the process of making a deed are to introduce activities to the appearer's identity, carefully verify the subject and object of the appearer, give a grace period in carrying out the deed, act carefully, meticulously and scrupulously in the processing process, and report if there is an indication of a criminal act in a transaction at the Notary.⁶

The requirements for the appearer to be able to draw up a deed before a Notary are contained in Article 39, which states that: 1). The appearer must meet the following requirements: a. The minimum age is 18 (eighteen) years old or married; b. Capable of performing legal actions; 2). The appearer must be known by the Notary or introduced to them by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of performing legal actions or introduced by two other appearers; 3). The recognition, as referred to in paragraph (2), is expressly stated in the deed.

The regulation of the Minister of Law and Human Rights Number 9 of 2017 obliges a Notary to be more thorough and careful in getting to know the appearers when checking the completeness and authenticity of the documents presented.⁷ Notaries also need to pay more attention to things that may possibly result in a criminal act, such as money laundering proceeds or not.⁸

The problem for Notaries that is often encountered in terms of its implications in the field is that the appearer submits false statements or fake documents. Even though this is not part of the Notary's responsibility, it will greatly affect the loss obtained by the Notary. When a problem occurs, a Notary will still be asked for information as a witness in this matter. Also, much time and material and non-material losses will be spent.

Therefore, the researcher will discuss how to prevent the indications of criminal acts of Notary deeds by applying Article 39 Paragraph (2) in the Notary Office Act. With the

⁶ Happy Warsito and Herman Adriansyah, "Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (2022): 24-33, <https://doi.org/http://dx.doi.org/10.28946/rpt.v11i1.1640>.

⁷ Imentari Siin Sembiring and Pujiyono Pujiyono, "Bribery In the Private Sector as A Corruption Offense Policy," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 21, no. 2 (2021): 126-38, <https://doi.org/https://doi.org/10.24252/al-risalah.v21i1.24908>.

⁸ Dita Amalia and Ali Abdullah, "Perlindungan Hukum Bagi Para Pihak Atas Perbuatan Melawan Hukum Yang Dilakukan Notaris Dalam Pembuatan Akta Wasiat (Studi Kasus Putusan Mahkamah Agung Nomor 394/Pk/Pdt/2015)," *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 1 (2021): 74-101, <https://doi.org/https://journal.univpancasila.ac.id/index.php/imanot/article/view/2788>.

brief description above, the author is interested in studying and raising this problem as a research study.

RESEARCH METHODS

In this study, the researcher mapped it out in three parts, namely from a scientific point of view, purpose, and place: a) From a scientific point of view, this study included legal research; b) From a purpose point of view, this study was exploratory research by trying to find something new in the sense of obtaining findings on legal efforts to prevent criminal acts at Notaries as the object of study in this study; and c) From a place point of view, this study was library research, which was based on relevant library materials in the form of books, journals or articles, bulletin and others. In this study, there were at least four main characteristics of literature research, namely: *first*, the researcher looked directly at the text without direct data from the field in the form of events or incidents, people and other objects; *second*, this study was ready-to-use, which means that the researcher only came into contact with relevant literature through available theories and studies; *third*, library data was generally a secondary source, it means that the study no longer obtained first-hand material or original data in the field; and *fourth*, the condition of library data was not limited by space and time or unlimited.

RESULT AND DISCUSSION

1. The Urgency of Implementing Article 39 Paragraph (2) Notary Office Act in Preventing the Indications of Criminal Acts in Making Notaries Deeds

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 Notary Office.⁹ In the context of evidentiary law, the existence of an authentic deed made before a Notary as a public official authorized to make an authentic deed can create a form of legal certainty and become a means of proof

⁹ Bambang Arwanto and Adillah Bahirah, "Kekuatan Pembuktian Akta Di Bawah Tangan Dihubungkan Dengan Kewenangan Notaris Dalam Pasal 15 Ayat (2) Uu Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang 30 Tahun 2004 Tentang Jabatan Notaris," *Mizan: Journal of Islamic Law* 5, no. 2 (2021): 237-46, <https://doi.org/https://doi.org/10.32507/mizan.v5i2.1048>.

in the judicial process if there is a dispute regarding the authentic deed.¹⁰ As for proof in civil law, it is regulated in Article 1866 of the Indonesian Civil Code, including written evidence, witness evidence, predictions, confessions, and oaths.

According to Komar Andasmita, writing made specifically to be legal and accurate evidence is called a deed. A deed is a special writing made to be written evidence.¹¹ There are several conditions relating to a deed that is declared authentic. Missariyani explained this by quoting Article 1868 of the Indonesian Civil Code as follows:

- a. A deed must be drawn up by or before a public official and, therefore, in conjunction with a Notary deed regarding agreements and stipulations.
- b. A deed must be in the form determined by law so that if it is not in accordance with what is determined by law, it can be threatened with losing its authenticity.

An authentic deed is included in proving part of the letter in civil procedural law. This is as explained by M. Yahya Harahap, who divides three documents into evidence, namely authentic deeds, private deeds, and unilateral deeds or unilateral confessions. From the classification of the evidence, all three are legal products made by a Notary based on their duties as stipulated in the Notary Office Act. The Notary's authority to make all kinds of deeds related to civil law relationships 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.¹²

Therefore, the existence of an authentic deed as a form of legal certainty related to evidence is part of the existing legal system in Indonesia. With regard to the legal system, Lili Rasjid explained that to create a just order, the law is a means embodied in various rules of community behaviour called the rule of law. All positive legal rules in a society

¹⁰ Muyassar Muyassar, Dahlan Ali, and Suhaimi Suhaimi, "Pertanggungjawaban Hukum Notaris Terhadap Peningkaran Akta Jual Beli Tanah Bersertipikat Oleh Pihak Yang Dirugikan," *Syiah Kuala Law Journal* 3, no. 1 (2019): 147-66, <https://doi.org/https://doi.org/10.24815/sklj.v3i1.12446>.

¹¹ Dendik Surya Wardana, Iswi Hariyani, and Dodik Prihatin AN, "Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 14-26, <https://doi.org/https://doi.org/10.19184/jik.v2i2.24088>.

¹² Muhammad Ridho, "Analisis Yuridis Dokumen Elektronik Hasil Pengecekan Sertifikat Sebagai Alat Bukti Dalam Sistem Pembuktian Di Indonesia," *Jurnal Notarius* 1, no. 2 (2022): 226-35, <https://jurnal.umsu.ac.id/index.php/notarius/article/view/13987>.

are regulated in a system called the legal order.¹³ The existence and functioning of the legal system based on legal principles and their enforcement are the result of human struggle in an effort to overcome life's problems.

As for the legal system in the framework of an authentic deed as formal evidence of the existence of a legal event, the Notary Office Act regulates the rules for making deeds before a Notary in the form of conditions that must be met by appearers by giving a Notary the obligation to know the identities of appearers and request data or supporting documents that relate to the deed to be made. This has been regulated in Article 39 Notary Office Act, which regulates the requirements for appearers as follows:

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

Regarding the position of the referrer, it has been regulated in Article 38 paragraph (3) letter b Notary Office Act, which basically regulates information regarding the position of the referrer to act. In making an authentic deed, the Notary must pay attention to the position of the appearers so that they can clearly know the object of the agreement that will be outlined in the form of an authentic deed.¹⁴ Based on the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Knowing Service Users for Notaries, namely, Notaries are required to apply the principle of recognizing Service Users that at least contain Service User identification, Service User verification and Service User Transaction monitoring.

¹³ Antonius Mahendra Dewantara and Dika Kirana Larasati, "Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges," *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 237–64, <https://doi.org/https://doi.org/10.15294/ijel.v1i2.58044>.

¹⁴ Intan Manisa Aulia Putri, Mulyani Djakaria, and Yusuf Saepul Zamil, "Akibat Hukum Klausula Pemutusan Secara Sepihak Dalam Perjanjian Pengikatan Jual Beli (PPJB) Hak Milik Atas Tanah," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 223–40, <https://doi.org/http://dx.doi.org/10.28946/rpt.v9i1.358>.

These regulations are still an obstacle in the field for Notaries to implement these regulations. Notaries believe that they are not responsible for the material correctness that has been agreed upon by the Parties. According to Freddy Haris and Leny Helena, it is important to read the deed, which means that the parties who sign and witness the birth of the deed know fully the things agreed upon and stated and the legal consequences.¹⁵

On the other hand, as a form of guaranteeing privacy protection for appearers in their oaths or promises 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.¹⁶ This oath or promise of office is regulated in Article 4 paragraph (2) Notary Office Act, which states as follows: ¹⁷ "I swear/promise that: 1) I will submit to and be loyal to the Republic of Indonesia, The Five Principles and the 1945 Constitution of the Republic of Indonesia, Notary Office Act and other laws and regulations; 2) I will carry out my position in a trustful, honest, thorough, independent and impartial manner; 3) I will maintain my attitude, behaviour, and will carry out my obligations in accordance with the professional code of ethics, honour, dignity and my responsibilities as a Notary; 4) I will keep the contents of the deed and information obtained in carrying out my position confidential; and 5) In order 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 their duties, a Notary is bound by laws and regulations and a Notary's code of ethics. Morally, Notaries are required to act in a trustworthy, honest, thorough, independent and impartial manner. In making an authentic deed, a Notary may not side with one of the parties in

¹⁵ Henry Donald Lbn Toruan, "The Importance of Using Electronic Deeds to Facilitate The Service and Storage of Notary Archives," *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 483–98, <https://doi.org/http://dx.doi.org/10.30641/dejure.2022.V22.483-498>.

¹⁶ Gassanova Farah Diba, Wira Franciska, and Felicitas Sri Marniati, "Perlindungan Hukum Bagi Para Pihak Akibat Perbuatan Tindak Pidana Yang Di Lakukan Oleh Notaris," *JOURNAL of LEGAL RESEARCH* 4, no. 2 (2022): 427–40, <https://doi.org/https://doi.org/10.15408/jlr.v4i2.25412>.

¹⁷ Irene Dwi Enggarwati, "Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik" (Brawijaya University, 2015).

their deed. If several parties are in a deed, the Notary must prioritize all the parties' interests in an authentic deed.

With regard to morality related to the Notary's trust and honesty, if the statement submitted by the appearer contains incorrect information or the deed given to the Notary contains a forged deed without the knowledge of the Notary. The deed and the binding are made before the Notary. With formal evidence, it contains the truth, but the fact of forgery submitted by the appearer is not the authority and responsibility of the Notary, so material truth cannot be proven. This is because the Notary cannot guarantee the truth that the interested parties in making the deed have provided the correct 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.

In connection with the above, M. Yahya Harahap explained that the authenticity of a deed is viewed from the point of view of valid proof. The deed has a function as a causal formality and as evidence so that the function is null and void if the deed made by a Notary does not have perfect evidentiary power.

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 Notary Office. The Notary Office Act regulates the rules for making deeds before a Notary in the form of conditions that must be met by appearers by giving a Notary the obligation to know the identities of appearers and request data or supporting documents related to the deed to be drawn up. This has been regulated in Article 39 UUJN concerning 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 performing legal actions.
- 2) The appearer must be known by the Notary or introduced by 2 (two) witnesses who identify themselves, who are at least 18 (eighteen) years old or married and capable of performing out legal actions or introduced by 2 (two) other appearers;
- 3) The acknowledgement referred to in paragraph (2) is expressly stated in the deed.

In making an authentic deed, the Notary must pay attention to the position of the appearers so that they can clearly know the object of the agreement that will be outlined in the form of an authentic deed. Based on the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Knowing Service Users for Notaries, Notaries are required to apply the principle of recognizing Service Users that at least contain Service User identification, Service User verification and Service User Transaction monitoring. This regulation is certainly an obstacle for Notaries in implementing these regulations.

According to Freddy Haris and Leny Helena, it is important to read the deed. This means that the parties who sign and witness the birth of the deed know fully the things that are agreed upon and stated and know the legal consequences and also to avoid the occurrence of a crime.

Basically, the Notary cannot be held responsible when the element of fraud and error is committed by the appearers. This is because the Notary only records what the parties convey to be poured into the deed. False statements submitted by the parties are the responsibility of the parties. In connection with the actions of a Notary who commits a criminal act of forgery of a deed or a criminal act of false information committed by the parties, the Notary Office Act does not specifically regulate criminal provisions because it is based on the principle of legality which is the principle in the Indonesian Civil Code.

However, before discussing an authentic deed, it must first be understood that there is a legal principle that forms the basis for everyone to be able to enter into an agreement. The legal principle is the principle of freedom of contract; according to M. Faiz Mufidi in Lina Jamilah stated that everyone has the freedom to bind himself to other people.¹⁸ Juridically, the principle of freedom of contract can be seen in the provisions of Article 1338 paragraph (1) of the Indonesian Civil Code, which states that "all agreements made legally apply as the law of those who make them".

In connection with an authentic deed, based on the principle of freedom of contract, the consequence is that everyone is free to make agreements. In the agreement, it has

¹⁸ Putri, Djakaria, and Zamil, "Akibat Hukum Klausula Pemutusan Secara Sepihak Dalam Perjanjian Pengikatan Jual Beli (PPJB) Hak Milik Atas Tanah."

become a law for those who make it. This means that all people bound by the agreement must submit and obey to carry out what has been promised.

Basically, a Notary cannot be held responsible for committing acts of fraud and mistakes made by appearers. This is because the Notary only records what the parties submit to be included in the deed. Incorrect information submitted by the appearer is the responsibility of the appearer himself. The Notary is only responsible if the fraud originates from the will and/or wishes of the Notary.¹⁹

The provisions of Article 39 paragraph (2) Notary Office Act relating to the requirements of the Appearer are formal requirements to be able to prevent indications of criminal acts in a deed drawn up by a Notary. This provision requires that an appearer must be at least 18 (eighteen) years old or married and capable of carrying out legal actions. The appearers must also be known by the Notary or introduced to him by 2 (two) identity 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 expressly state in the deed.

2. The Procedures Carried Out by a Notary in Implementing Article 39 Paragraph (2) Notary Office Act to Prevent the Indications of Criminal Acts in Making Notaries Deeds

The provisions of Article 39 paragraph (2) Notary Office Act, which require a Notary to know the appearers, must be applied by the Notary before the deed is drawn up. This article emphasizes that a Notary is not arbitrary to make a deed even though they have 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 they have known the appearers. If the Notary is negligent in making the deed so that it causes a criminal act, then the Notary must also be held responsible for the deed they made.

Criminal law problems within the scope of a Notary's duties can be caused by a Notary's carelessness in making an authentic deed, especially regarding the appearer's data about the subject and object that will be included in the authentic deed so that it is

¹⁹ Bruce Anzward and Arifin Samuel Candra, "Pertanggungjawaban Hukum Bagi Notaris Terhadap Akta Yang Mengandung Keterangan Palsu," *Journal de Facto* 8, no. 2 (2022): 122-44, <http://jurnal.pascasarjana.uniba-bpn.ac.id/index.php/jurnaldefacto/article/view/114>.

not uncommon to cause criminal acts in the form of falsification of letters or false statements made by the appearer in an authentic deed drawn up by a Notary.²⁰ In the context of intent or negligence in criminal law, Moeljatno explained that "deliberation is an act that is realized, understood and known in such a way that there is no element of misunderstanding. Negligence is the occurrence of an act because it is never thought there would be consequences for not paying attention to it.

In the Notary Office Act and Code of Ethics provisions, the Notary's criminal responsibility for the deed they made is not regulated if they are proven to have violated the criminal law. The provisions of the Notary Office Act only regulate civil and administrative legal sanctions.²¹ Notary Office Act stipulates that if a Notary, in carrying out their position, is proven to have committed an offense, then 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 violations of these sanctions are then qualified as criminal acts committed by a Notary. These aspects include:

- a. Certainty of day, date, month, year and time appear;
- b. The parties (who) appear before the Notary;
- c. Face 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 are not completely signed, but the minutes of the deeds are issued.

M. Yahya Harahap explained the form of responsibility of a Notary in making an authentic deed indicating the existence of a crime as follows: "The notary concerned cannot be held responsible if the appearers commit the elements of fraud and error because the notary only records what the parties submit to be poured out in a deed. This is often referred to as a *partij* deed. False statements submitted by the parties are the

²⁰ Rahman, "Penerapan Prinsip Kehati-Hatian Notaris Dalam Mengenal Para Penghadap."

²¹ Urip Prayitno and Moh Saleh, "The Urgency of Applying Article 39 Paragraph (2) UUJN Against Prevention of Indications of Criminal Acts in Notary Deeds," *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam* 15, no. 1 (2023): 55–66.

responsibility of the parties. It means that the notary is only responsible if the fraud originates from the notary's will and/or wishes. In the Notary Office Act, which regulates sanctions for violations committed by a notary, a deed made by a notary does not have the power of an authentic deed. Still, it only has the power of an underhand deed. In connection with the actions of a notary who committed the crime of falsifying a deed or the criminal act of providing false information committed by the parties, the Notary Office Act does not specifically regulate criminal provisions because it is based on the principle of legality, which is the principle in the law.

As for the legal consequences of a Notary deed does not apply the precautionary principle in knowing the appearers, this can be done by first looking at the legal actions. If the appearers make a mistake, the legal consequences of the deed made can be reduced to a private deed.²² This is as explained by the Notary and the Central Supervisory Board, Hendrik Budi Untung in Fikri Ariesta Rahman, that the legal consequences of a notary who does not apply the precautionary principle in knowing the appearers is to first see the legal actions that will be taken by the facing.

If the person who states present is not the person actually facing the Notary's office, then the deed can be denigrated. The Notary is not responsible for fake deeds and errors are shown by the appearer. An authentic deed is downgraded to a private deed is an authentic deed that has experienced a decline in quality or a decline in status. It means its position is lower in strength as a means of proof than the power of proof. Perfect evidence for initial proof, such as a private deed, and can have legal defects that cause a deed to be cancelled or invalid.

If in the process of making the deed found a mistake by the appearer and contrary to the applicable laws and regulations, then the authentic deed can be null and void and can be cancelled through a judge's decision.²³ Meanwhile, the legal consequences of a Notary who is proven not to apply the precautionary principle in knowing the appearers may be subject to administrative sanctions in accordance with the Notary Office Act and

²² Intan Rahmadanti, Herman Fikri, and Fatria Khairo, "PERLINDUNGAN HUKUM TERHADAP NOTARIS BERDASARKAN PRINSIP BASED ON FAULT OF LIABILITY (TANGGUNG JAWAB BERDASARKAN KESALAHAN)," *Lexstricta: Jurnal Ilmu Hukum* 1, no. 2 (2022): 103–14.

²³ Enggarwati, "Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik."

may be subject to civil sanctions such as compensation or criminal sanctions such as imprisonment. If the Notary is proven to have made a mistake, then it is wrong a claimant who has been harmed can request civil liability, the compensation can then be held criminally liable through a court decision, and appearers can request compensation.²⁴

The difference between the degradation of a deed and the cancellation of a deed is that if it is declared null and void by the judge, then an authentic deed is deemed to have never existed. If a notary's deed is null and void, the result of a legal action taken has no effect since the occurrence of the said law or is retroactive. Null by law based on a court decision that has permanent legal force.²⁵ Meanwhile, it can be cancelled due to a legal action taken without legal consequences since the cancellation occurred and where the cancellation or legal action depends on a particular party causing the legal action to be cancelled. Deeds whose sanctions can be cancelled remain valid and binding as long as no court decision has a permanent legal force to cancel the deed.

In order to seek material truth regarding the identity of the appearers, a Notary is not burdened by the Notary Office Act but must be careful. Therefore, a Notary must seek material truth so that the deed he makes does not become a deed and is detrimental to appearers in the future. In addition, in order to avoid criminal sanctions in the form of falsification of deeds, whether committed by the appearer or negligence by the Notary himself. Thus, it becomes a moral burden for a Notary to carry out their duties. Not only receiving information from the parties and then making the deed, but also paying attention to moral factors related to safety, honesty and impartiality as the oath or promise of office as a Notary has been made before carrying out their duties as a Notary.

²⁴ Anita Ratna Sari, "Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Kredit Dengan Menggunakan Surat Palsu (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor 952/PID. B/2019/PN. JKT. BRT.)," *Indonesian Notary* 2, no. 2 (2020): 3.

²⁵ Supardin and Abdul Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 26, 2021): 913-27, <https://doi.org/10.22373/SJHK.V5I2.9353>.

3. The Roles and Responsibilities of Notaries in Preventing the Indications of Criminal Acts in Making Notaries Deeds In accordance with Article 39 Paragraph (2) Notary Office Act.

A notary is a public official whose job is to make authentic deeds that are used as evidence and have perfect strength. This makes the Notary have many responsibilities in carrying out their profession. A notary is charged with the responsibility of making the deed. In terms of professional responsibility, the Notary related to the deed are:

a. Notary's civil responsibility for the deed they made

The notary's responsibility in civil matters is related to the material truth of the deed in constructing an unlawful act. The legal action can be active or passive. Active nature in the sense of carrying out actions that can cause harm to other parties. While passive attitude, in the sense of not doing an act that is a must so that the other party suffers a loss.²⁶ Thus, the elements of an unlawful act are an unlawful act, an error and the resulting loss. An unlawful act here is interpreted broadly, namely an act that violates the law and decency, decency or the rights of others causing harm.

In law, there are 3 (three) categories of unlawful acts as follows: 1) Unlawful acts on purpose; 2) Unlawful acts without fault (without intention or negligence); and 3) Unlawful acts due to negligence. In addition, an unlawful act must meet the following requirements: *First*, the act is contrary to the legal obligations of the perpetrator.²⁷ *Second*, the act is contrary to the subjective rights of others. *Third*, contrary to decency. *Fourth*, contrary to decency, thoroughness and prudence.

Article 1320 of the Civil Code regulates four conditions that must be met regarding agreements. The deed can be declared null and void if these conditions are not met. If it is null and void, the deed is deemed to have never been made so that if this is proven, the injured party can claim responsibility from a Notary to reimburse costs, compensation or

²⁶ Virgin Venlin Sarapi, "Analisis Yuridis PertanggungJawaban Notaris Yang Melakukan Perbuatan Melawan Hukum Dalam Pembuatan Akta Autentik," *Lex Privatum* 9, no. 2 (2021): 158-62, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33160>.

²⁷ Nurul Aulia Dewi and Abdul Halim Talli, "Analisis Perbandingan Mazhab Tentang Pelaksanaan Mediasi Dengan Media Telekonferensi," *Mazahibuna*, December 17, 2020, 194-211, <https://doi.org/10.24252/MH.V2I2.17818>.

interest to the party mentioned in the deed.²⁸ However, this responsibility can be asked of the Notary, and it must be based on the relationship between the Notary, and the parties who appear before the Notary and some parties feel disadvantaged as a direct result of a notary deed.

The responsibilities of a notary in civil terms related to the prevention of criminal acts need to apply the precautionary principle in making a deed by carefully identifying the appearers who appear before the Notary in making an authentic deed.

b. The Responsibility of a Notary in Carrying Out Their Position based on the Notary's Code of Ethics

In terms of making a contract, a Notary must fulfil the provisions of the relevant law. If there is an error in carrying out their position, the Notary can be held accountable when proven to have violated the code of ethics. The violation of the code of ethics by a Notary in carrying out their position may be subject to administrative sanctions as a form of accountability.²⁹

Sanctions that can be imposed on a Notary by the Indonesian Notary Association (INA) are listed in Article 6 Amendments to the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association, Banten 29-30 May 2015, namely: "1. Sanctions imposed on members who violate the Code of Ethics are in the form of:

- a. Reprimand;
- b. Warning;
- c. Temporary termination of Association membership
- d. Honorable termination of Association membership
- e. Dishonorable termination of Association membership

Therefore, the Notary is burdened with the responsibility to uphold the Notary's code of ethics in making authentic deeds. Making an authentic deed by a Notary is strong

²⁸ Muhammad Sabir and Rifka Tunnisa, "Jaminan Fidusia Dalam Transaksi Perbankan; Studi Komparatif Hukum Positif Dan Hukum Islam," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 1 (2020): 80-97, <https://doi.org/10.24252/MH.V2I1.14284>.

²⁹ Hamzah Hasan, "Criminology in Islam; between Human-Kind and Injustice," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 1 (2021): 61-75, <https://doi.org/10.24252/MH.V3I1.21238>.

evidence that can be misused. Therefore, the Notary is responsible for all the deeds they make.

c. Administrative responsibility

Notary Office Act stipulates that when a Notary, in carrying out their duties, is proven to have committed a violation, the Notary may be subject to or be subject to sanctions in the form of civil, administrative, and notary code of ethics, where these sanctions have been regulated in such a way in Notary Office Act and the Notary's Code of Ethics.

Administrative sanctions for Notaries regulated in the Notary Office Act have been determined as follows. In Article 85 Notary Office Act, it is stated that "Violation of the provisions referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1). letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63.

The implementation of sanctions against a notary is not only when the Notary commits an active violation, but the Notary will also receive sanctions for passive violations. Passive violations can be through appearers who make deeds before a Notary.³⁰ The Notary must implement Article 39 of the Notary Office Act, which contains the requirements for the appearance before the Notary to draw up a deed.

d. Notary's criminal responsibility for the deed they made

Deviation from a deed drawn up by a Notary can lead to a criminal case. If this happens, the Notary must be criminally responsible for what has been done. Criminal responsibility arises with the continuation of objective reproach (*verwijbaarheid*) for actions declared as criminal acts based on the applicable criminal law and subjectively to perpetrators who meet the requirements to be subject to punishment for their actions.

If the contents of the deed issued by a Notary prove that there has been a criminal act in the form of forgery either in the form of contents or signature in a deed issued by a

³⁰ Dewantara and Larasati, "Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges."

Notary, the criminal liability imposed is in accordance with the provisions in the Criminal Code. The contents of the deed in question is a deed drawn up by a Notary and must meet the formal and material requirements, while the formal requirements must contain the date, month, and year and be signed by the parties, witnesses and Notary. The signature by the parties in an authentic deed must be confirmed in the deed, with the aim of this confirmation being none other than to authenticate the parties' signatures to the deed. Article 263 paragraph 1 has two elements, namely an objective element and a subjective element. The objective element consists of a) Making a fake letter, b) Forging a letter, c) Who can issue a right, who can issue an agreement, which can be intended to be evidence of something. Meanwhile, the subjective element consists of: a) To use the letter as if it were genuine and not counterfeit, b) To use said letter may cause harm. Article 263 paragraph 1 contains two types of prohibited acts, namely making fake letters and forging letters. This crime is called "Forgery of Letters".

Based on the criminal threat that can ensnare a Notary for the deed they made, the requirements for making the deed contained in the Notary Office Act must be fulfilled perfectly in order to prevent criminal acts that may be committed by appearers. If there is an indication of a criminal act in the process of making the deed, the Notary must report it to the competent authority.

Article 34 Notary Office Act contains the following points;

- 1) The appearer must meet the following requirements:
 - a) At least 18 (eighteen) years old or married; and
 - b) Capable of performing legal actions.
- 2) The appearer must be known by the Notary or introduced 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 acknowledgement, as referred to in paragraph (2), is expressly stated in the deed.

This article instructs the Notary to know very well the appearer who is facing them. Point 2 of Article 39 Notary Office Act contains a condition that the appearer cannot be just anyone; at least the appearer must be introduced by two appearers or two identifying

witnesses. This is intended to avoid data manipulation that is likely to be carried out by appearers and to avoid making it to be carried out by random people.

The role of Notary in implementing Article 39 Notary Office Act is very important in preventing indications of a criminal act because the implementation of this article is very important for Notaries to prevent criminal acts in the future. Criminal responsibility is not only borne by the appearers but will also be borne by the Notary.

CONCLUSION

Article 39 paragraph 2 Notary Office Act plays an important instrument in preventing the indications of criminal acts in the authority to make Notaries deeds. The existence of Article 39 paragraph 2 Notary Office Act places Notaries as objects that are able to act legally by providing formal certainty over authentic deeds made without giving rise to indications of a crime. Procedurally, the implementation of Article 39 paragraph 2 Notary Office Act in preventing criminal acts is carried out through the principle of prudence and systematically by requiring the Notary to know the parties who appear and also pay attention to other aspects, including the certainty of the day, date, month, year and time of appearance, signature, copy of the deed, and minutes of the issued deed. In addition, the roles and responsibilities of a Notary in making a deed based on Article 39 paragraph 2 Notary Office Act include civil responsibility, code of ethics responsibility, administrative responsibility and criminal responsibility.

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