

# **Responsibility of a Notary Public Towards a Forged Deed of Decision of the Shareholders Meeting (Example of the Cases of Banten High Court Number 9/PID/2019/PT.BTN)**

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## **ABSTRACT**

The responsibilities carried out by the Notary Public are civil, criminal, administrative and code of conduct responsibilities so that in practice there are several laws and regulations governing the Law of Notary Position, Minister of Law and Human Rights Regulations and Notary Ethics Code, also the Criminal Code related to the abuse of authority of public officials in making the deed. If a Notary violates a provision, then the Notary will be subject to sanctions. One example of a notary action that is subject to sanctions is forgery of a deed done by Notary R. Meliani Rahmawati. This attracts the attention of the writer, because the laws and regulations have set the act with sanctions in such a way but are felt to lack a deterrent effect. Notary R. Meliani R. was charged with criminal liability, which was subject to imprisonment for 10 (ten) months, but was not charged with civil liability because the court refused to compensate for material damages by the Notary Defendant. The supervision carried out by the Notary Supervisory Board in this case is also felt to be inadequate in paying attention to the decisions handed down by the court as it is one of the elements for the Notary to be dishonorably discharged. Knowing that her actions will be detrimental to a company, the Notary deserves to be held materially accountable and the Notary Supervisory Board should pay attention to the court's decision as the executor of oversight of the Notary.

**Keywords:** *Notaries, Responsibilities, Forgery*

## **1. INTRODUCTION**

- **Background**

Human beings are a social species that relies on cooperation to survive and thrive. (It also cannot be separated without the law). Ubi societas ibi ius is a famous legal maxim from the Roman philosopher, Cicero, which has the meaning of "where there is a society, there is law."<sup>1</sup> The Law regulates agreements and some examples of agreements are agreement of marriage, employment contract, and lease. Article 1313 of the Civil Code (KUHPerdata) states "An Agreement is an Act with which one or more persons commit themselves to one or more other persons." The provisions of this article become a legal basis for everyone who wishes to enter into an agreement followed by the legal

requirements of an agreement regulated in Article 1320 of the Civil Code. Every person who enters into an agreement has a purpose so that the rights and obligations in conducting a legal relationship can be guaranteed.

The parties who want to enter into an agreement have the choice of whether the agreement is made by making an authentic deed or private deed. The difference between an authentic deed and a private deed, that is, in an authentic deed has a perfect proof of strength, making it difficult for anyone to deny it, whereas in a private deed it does not have a perfect proof of strength so it is more easily denied by one of the parties.

Notary as a public official has the authority to make an authentic deed regulated in Article 15 paragraph (1) of Notary Position Law No. 2 of 2014 (Pasal 15 ayat (1) Undang-Undang Jabatan Notaris No. 2 Tahun 2014). Every deed issued by a notary in the process of its formation refers to the provisions of the law. A notary cannot determine for themselves the form and content of an authentic deed, with the purpose of ensuring certainty, order and legal protection

for the parties to the deed.<sup>2</sup> In Indonesia, the provisions in making authentic deeds are regulated in the Notary Position Act (Undang-Undang Jabatan Notaris/UUJN).

The types of deeds issued by notaries consist of partij deed and relaas deed. Partij deed contains information about what happened based on the statement given by the parties regarding a need for the notary to record the statement in a notarial deed.<sup>3</sup> Relaas deed is a deed made based on notary observations of a legal event, compiled in an official report. Notary deeds are not only needed by individuals as legal subjects but are also needed by legal entities, one of which is a Limited Liability Company. Limited liability companies are regulated in Act Number 40 of 2007 concerning Limited Liability Companies (Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas/UUPT). From the beginning of the establishment until the change in the Company is inseparable from the role and tasks of the notary. In addition to the deed of incorporation of the company, several things are needed by the notary's role as a witness or the need for a notary deed, namely having amendments of the articles of association (Article 21 UUPT), transfer of rights over shares (Article 56 UUPT), minutes of the GMS by a notary deed (Article 90 UUPT), the Merger, Amalgamation, Acquisition, or Separation Plan that has been approved by the GMS is written into the Deed of Merger, Amalgamation, Acquisition, or Separation made before a notary (Article 128 UUPT), and an extension of the time for submitting amendments to the articles of association to the Minister (Explanation of Article 22).

Seeing the many roles of notaries in the civil sphere makes a notary obliged to be careful and know that what he/she does will not cause harm to any party, therefore it is necessary to supervise the actions of a notary public. Supervision of a notary's behaviour is given to the Supervisory Board formed by the Minister based on the provisions of Article 67 UUJN. The existence of the Notary Supervisory Board is regulated in UUJN and strengthened by the Republic of Indonesia's Minister of Law and Human Rights Regulation Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions against Notaries. The purpose of holding notary supervision is to carry out the duties of a Notary in accordance with the requirements stipulated by legislation, considering the appointment of a Notary to serve the public.<sup>4</sup> The Notary Supervisory Council has the role of supervising the Notary, so that the Notary's actions do not deviate from their authority and do not violate the prevailing laws and regulations. In terms of supervision, it is necessary not only the role of the government but also the role of the community to supervise and provide reports to the Notary Supervisory Council, regarding the actions of Notaries who in carrying out their duties are not in accordance with legal regulations, in an effort to resolve problems arising from the Notary's actions. The Supervisory Board as referred to in

Article 67 paragraph (2) consists of Majelis Pengawas Daerah (MPD), Majelis Pengawas Wilayah (MPW) and Majelis Pengawas Pusat(MPP).

The Notary Position Law regulates the act of a notary who, in carrying out his duties and authority, is proven to have committed a violation, then the notary may be subject to sanctions. Violations of civil law are subject to sanctions such as reimbursement or compensation. Violations of the administration result in an authentic deed turning into a private deed. Violations of the notary code of ethics are subject to penalties, suspension and dismissal. The Notary Position Law does not regulate the existence of criminal sanctions for notarial acts. This does not exempt the notary from criminal liability. A notary may be held liable for criminal acts in the event that his/her actions contain criminal acts.

## 2. METHODS

This research uses descriptive analytical normative research methods that describe the data obtained deductively.

## 3. DISCUSSIONS

### • *Responsibility of a Notary Public Towards a Forged Deed of Decision of the Shareholders Meeting*

The notary is responsible for every deed he/she drafted as a public official who has made his/her promise. As a public official who is supervised by the Minister and mediated by the Notary Supervisory Council, notaries are obliged not to commit an act that can undermine their dignity. Notaries have various regulations governing their every act, whether they are civil, administrative or criminal matters.

Actions made by Notary R. Meliani Rahmawati by making a fake deed according to the author there are several forms of liability that must be carried out by the author, namely:

#### 1. *Civil Liability*

The notary's responsibility in making authentic deeds adheres to the principle of liability based on fault, in which the Notary is responsible for the deed that he issues if there is a fault or violation made intentionally. However, notaries

can be freed from this responsibility if the element of fault or violation lies with the parties, because the notary is only responsible for the formal form of authentic deeds as stipulated by UUJN. The provisions stipulated in the UUJN regarding the deed and the authority of notaries in conjunction with Article 1868 KUHP, resulting in a perfect notary deed. A perfect deed is made by or in the presence of a public official, the form determined by law and carried out by an authorized official, with due regard to the subjective and objective elements of an agreement.

The notary is deemed to have committed an unlawful act if there is a loss due to the deed he has made, so that any action carried out by the notary other than the content of the deed can be held accountable if in the future the action causes loss to the parties because there is a mistake on the basis of negligence or deliberate action by Notary Public. Notaries may be subject to sanctions as determined by law if they are proven to have committed a mistake as stated in the Article 84 UUJN.

Forming a deed by a notary will create new rights and obligations, so according to the author a notary must also be responsible for the material accuracy of the deed. In the case of making a Deed of Decision with an official report compiled by the notary, the notary must ensure the accuracy of the event at the GMS, considering that the Notary is obliged to act honestly, thoroughly, independently, and impartially. In the case of a Share Transfer, parties intending to buy and sell shares must attend the GMS, and must be present at the time the minutes are to be written by the notary in the form of a notary deed.<sup>5</sup>

The act committed by Notary Meliani caused losses to PT CPA, namely the loss of their right to take legal actions as shareholders in PT PLCM and PT MAS, hampering PT PLCM and PT MAS due to changes in the composition of management, giving the rights for Yolius and Abi Kusno to lease a house for later to be legalized as a company domicile, having the Clear and Clean certificate at the Directorate General of Mineral and Coal of the Ministry of Energy and Mineral Resources, and hampering the profits that should be obtained by PT CPA of Rp 1,475,040,660,000.00 (one trillion four hundred seventy-five billion forty million six hundred sixty thousand rupiah). Unlawful act that are consciously carried out by Notary R. Meliani has violated the rights of others, and it is also against legal obligations, decency and propriety. So according to the author, Notary R. Meliani R. deserves to be held responsible property because she knows her actions will have a major impact on a company.

## 2. *Criminal Liability*

Notary is prosecuted on the basis of violation of Article 264 paragraph (1) juncto Article 55 paragraph (1) 1e of the Criminal Code (Pasal 264 ayat (1) jo Pasal 55 ayat (1) ke-1e KUHP).

The Panel of Judges believes that all elements in the article have been fulfilled, so that a decision is obtained at the first court in the form of 2 years probation, then at the appeal level the decision of the High Court is obtained in the form of 10 (ten) months in prison.

### • *The Role of MPD, MPW and MPP in Responding to the Notary Who Have Forged Deeds*

Before UUJN came into effect, the judiciary took the role of supervising the Notary as regulated in Article 140 Reglement op de Rechterlijke Organisatie en Het Der Justitie (Stb. 1847 No.23), Article 96 Reglement Buitengewesten, Article 3 Ordonantie Buitengerechtelijke Verrichtingen - State Gazette 1946 Number 135, and Article 50 of the Notary Position Regulation. After the enactment of Law Number 30 of 2004, supervision of Notaries is carried out by the Minister with the intermediary MPD, MPW and MPP formed by the Minister. Each supervisory board has its respective authorities and duties which are regulated in UUJN as well as implementation procedures regulated in a Ministerial Regulation.

In carrying out supervision, the MPD is authorized to receive reports from the public or other notaries who feel they have been treated unfairly by the actions of a notary public, which is then the notary is subjected for investigation. The result of the investigation will then decide whether the notary's action's were a mistake or not, then the decision is forwarded to MPW. The MPW is only authorized to re-discuss the MPD results to be forwarded to the MPP, because only the MPP has the authority to impose sanctions in the form of reprimands and suspension. Regarding a temporary discharge, an honorable discharge or a dishonorable discharge is proposed to the minister who will make the decision.

Court Ruling Number 1857 / Pid.B / 2017 / PN.Tng states that the Notary Defendant is legitimate and proven to have committed a criminal act referring to Article 264 paragraph (1) to 1 jo Article 55 paragraph (1) to (1) of the Criminal Code with the most threat of imprisonment 6 (six) years.

The decision handed down by the first judicial district court towards the Accused Notary Public is only a probation period of 2 (two) years. Then in the appellate decision, the Notary Defendant was imprisoned for 10 (ten) months.

Article 13 of the Notary Position Act in conjunction with Article 92 and Article 93 of the Minister of Law and Human Rights Regulation No. 19 of 2019 (Pasal 13 UUJN juncto Pasal 92 dan Pasal 93 Permenkumham Nomor 19 Tahun 2019) states that in criminal acts with the threat of imprisonment with maximum prison sentence of 5 (five) years or more, the Notary may be dishonorably discharged after a legally binding decision. However, in this case, there

was no Ministerial Decree which stated that the Defendant of the Notary was dismissed from his position, even though UUJN had set the provisions.

#### 4. CONCLUSION

Based on the discussion above, it can be concluded :

1. In this case of forgery by Notary R. Meliani Rahmawati, she was only charged with criminal liability, namely in the first judicial district court ruling in the form of 2 (two) years of probation so that an appeal was made with a 10 (ten) month prison sentence. Whereas in a civil judgment, the court rejects the claim for compensation submitted towards the notary. Therefore it is not appropriate if the notary is not charged in the form of compensation.
2. UUJN states in the case that if a Notary is declared by a court decision to have committed a criminal with the threat of imprisonment with maximum prison sentence of 5 (five) years or more, the MPP may submit a proposal to the Minister to dismiss the notary. In this case it was stated that Notary R. Meliani Rahmawati was legally and proven for the act of taking part in forgery with a maximum prison sentence of 6 (six) years.

However, in both the first judicial district court ruling and the high court ruling, there was no report by the MPP to the Minister regarding the dismissal of the Notary.

#### Suggestions

1. Based on the results of this research, the author believes that Notary R. Meliani Rahmawati should be held liable to pay the compensation.
2. Supervision towards court ruling regarding criminal acts that have been mentioned in UUJN with a possibility of dishonorable discharge must be carried out to prevent the occurrence of similar acts by other Notaries.

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