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Legal Liability for Notaries Due to the Issuance of Authentic Deeds Resulting in State Losses

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ABSTRACT

Notaries perform the operational duties of public officials authorized by the state to create authentic legal documents. One of the notary's functions is to provide fee waivers (honorarium) when the public who needs notary services can show evidence of poverty from authorized officials. This research aims to provide insight into the professional practices of notaries involved in corruption cases that harm the state. When a notary commits an irregularity in a deed that results in a criminal case, they must be criminally responsible for whatever they have committed. This research uses the normative juridical method, i.e. law in book research or literature study with statute, conceptual, historical, and system approach. A notary must be held accountable for a deed if it contains a criminal act. The responsibility is in the form of strict sanctions following the law's implementation with the Criminal Code and the Criminal Procedure Code. Notarial deeds that cause criminal cases have evidentiary power as deeds under the hand or become null and void as stipulated in Article 41 of the Notary Public Office Law.

Keywords: *Authentic Deed, Legal Liability, Notary, Sanction.*

INTRODUCTION

The legal system in Indonesia recognizes and determines the existence of proof in writing stated in Article 1866 of the Civil Code in the form of a deed under the hand or an authentic deed as the strongest evidence. Therefore, it is required to have an authentic deed as the strongest civil evidence according to the applicable legal order, it is required to have a public official assigned by law in implement the making of authentic deed. According to S.J Fockema Andrea in his book *Rechts geleerd handwoorddenboek*, the word deed comes from the Latin "acta" which means "gechrift" or letter (Ariawan et al., 2018). In general, deed has two meanings, called action (handling) or legal action (*rechtshandeling*) and a writing used as a certain legal act. The government who implement a part of state authority that is binding on the public (*publiekrechtelijk*) are called public officials, while notaries are individuals who perform the operational duties of public officials who have been authorized by the state to create authentic legal documents (Adjie, 2020). As a public official, the notary must get protection and guarantees in order to practice law and provide legal services to the general public (*Openbaar Ambtenaar*), and must be professional since it represents the state in implementing its social duties and functions in making deeds as evidence in the form of "authentic deeds" (A. A. Prajitno, 2015).

One of notary's function is in providing fee waivers (*honorarium*) when public who need notary services can show the evidence of indigence from the authorized officials. When the client has a legal issue, they frequently ask to a notary for legal aid rather than going to court with a lawyer. Therefore, in every authority must have a clear legal basis. For the government, the basis for performing public legal acts is the existence of authority related to an office (*ambt*). The position obtains authority through three sources, called attribution, delegation and mandate, which will provide authority (*bevoegdheid*, legal power, competence) and the basis for performing private legal acts is the ability to act (*bekwaamheid*) of legal subjects (persons or legal entities) (Philipus M Hadjon, 2019). When an official takes action outside his authority, it is called an unlawful act. An authority must be specifically specified in the applicable laws and regulations in order to exist. In addition to making authentic deeds, one of the important functions is as a legal advisor and information provider in making authentic deed as stipulated in Article 15 paragraph (2) letter e of Law No. 30/2004 concerning Notary Position (UUJN). In order to comply with the law and ensure that the parties' intentions are conducted correctly and accurately, the notary drafts written proof in the form of an authentic deed in accordance with the parties' desires.

In conducting the position and fulfilling the function of legal advisor, the notary is not passive or acts as a "dictaphone" who only accepts what the parties ask in the written deed. Still, the notary must play an active role by assessing the deed he requested and should be quick to object or refuse when the party's interests

are not by the feasibility or law. Notaries must operate independently of outside influences, especially executive power. The notary profession is very heavy, especially regarding its duties, obligations and responsibilities. Because it carries the authority of the state and the community, a notary's work is extremely noble. The purpose of having a notary public is to provide services simultaneously, preventing subsequent inconsistencies or violations with relevant positive laws.

It does not eliminate the potential that there are still numerous instances of criminal conduct called corruption, which frequently involve numerous parties. It is not only state officials who tend to receive bribes, but also private parties who usually give bribes or in some cases are considered detrimental to state finances. Corruption also drag a number of noble professions from advocates to notaries. In addition, the involvement of notaries in the vortex of corruption cases is not only limited to witnesses, but also as suspects. The involvement of a notary in the vortex of corruption cases indicates that there are many causes that violates the authority of the Notary itself. In fact, Law No. 2 of 2014 concerning Amendments to UUJN (UUJN Amendment Law), in Article 15 that regulates the authority of Notary in making or confirming the interests of various parties in authentic deeds.

It is known that a notarial deed is an authentic deed containing data received from parties that are made into evidence by investigators. Both investigators from the police and at the prosecutor's office or investigators from other law enforcement agencies. Therefore, when a notary is not careful in writing the data into the authentic deed and understands the legal impact of making the deed, there could be legal repercussions. The notaries are also required to always apply the principle of prudence in exercising their authority to not to be caught in legal cases, including corruption cases. Meanwhile, the Ministry of Law and Human Rights has received various complaints from the public about notary violations. These range from alleged criminal offenses to notaries who are dead in making deeds. These violations by unscrupulous notaries have caused legal consequences that have led to lawsuits against Ministry of Law and Human Rights either through the district court or state administrative court, to the reporting of alleged criminal acts in law enforcement officials. Based on this case, the government needs to conduct stricter supervision of notaries in conduct their positions. The duties and responsibilities of notaries in doing their profession are in direct contact with community activities (Zaenal, 2022). As a public official authorized to make authentic deeds, notaries are expected to have sensitivity in conducting the diligence. The notary is obliged to ensure the correctness of the document contents or information from the confrontation which written into the deed.

The Notary Supervisory Council (MPN) and Notary Honor Council (MKN) are the frontline in supervising and sanctioning notaries as mandated by the law. MPN has the authority to provide guidance and supervision on the behavior and implementation of the notary, while MKN has the authority to refuse or approve the taking of copies of original deeds (minuta) and the summoning of notaries by

law enforcement officials for the purposes of judicial process, investigation, and prosecution. Unfortunately, the current system does not support the monitoring of the implementation of MPN and MKN duties as an extension of the Minister of Law and Human Rights. Regarding Indonesia's efforts to become a member of the Financial Action Task Force (FATF), it is currently in the Mutual Evaluation Review (MER) process. One of the evaluation materials is the supervision of several professions that are considered to have a high risk of Money Laundering (TPPU) and Financing of Terrorism (TPPT), including the notary profession as one of the reporters of suspicious financial transactions in Government Anti-Money Laundering (goAML) application. In this case, the obligation of notaries to apply the Principle of Recognizing Service Users through filling out the Customer Due Diligence (CDD) form which supervises the compliance of notaries in applying the Principle of Recognizing Service Users is the responsibility of the Ministry of Law and Human Rights.

The amendment to the UUJN was made in 2014. The changes were made quite a lot because several provisions in the UUJN were no longer in accordance with legal developments and community needs to emphasize and strengthen the duties, functions, and authority of notaries as officials who implement the public services, as well as synchronize with other laws. The Law amending UUJN is intended to provide assurance of certainty, order, and legal protection, requiring written evidence that is authentic regarding actions, agreements, stipulations, and legal events made before or by authorized officials. The Law also guarantees that notaries as public officials who conduct their profession in providing legal services to the public need to receive protection and guarantees to achieve the legal certainty. Some of the amended provisions of the UUJN are:

1. Strengthening the requirements as a notary, among others, the existence of a health certificate from a doctor and psychiatrist and the extension of the period of undergoing an internship from 12 (twelve) months to 24 (twenty-four) months;
2. The addition of obligations, prohibition of concurrent positions, and reasons for temporary dismissal of Notary;
3. The imposition of obligations to prospective notaries who are doing an internship;
4. The sanctions applied in certain articles in the form of a statement that the deed concerned only has evidentiary power as a deed under hand, an oral/written warning, or a claim for compensation to the notary.
5. The differentiation of changes that occur in the content of the deed, both absolute and relative;
6. The establishment of a notary honor council;
7. Strengthening and affirmation of notary organizations;
8. The affirmation to use Indonesian as the official language in making authentic deeds; and

9. Strengthening the function, authority, and position of the Supervisory Council.

The changes regarding the Notary Position are:

1. Strengthening the requirements as a notary, the existence of a health certificate from a doctor and psychiatrist and the extension of the period of undergoing an internship from 12 (twelve) months to 24 (twenty-four) months;
2. The addition of obligations, prohibition of concurrent positions, and reasons for temporary dismissal of notaries;
3. The imposition of obligations to prospective notaries who are doing an internship;
4. The adjustment of sanctions applied in certain articles in the form of a statement that the deed concerned only has evidentiary power as a deed under hand, an oral warning/written warning, or a compensation to the notary;
5. The differentiation of changes that occur in the content of the deed, both absolute and relative;
6. The establishment of a notary honor council;
7. Strengthening and affirmation of notary organizations; affirmation to use Indonesian as the official language in making authentic deeds; and
8. Strengthening the function, authority, and position of Supervisory Council.

The form of prohibition for Notary is an prohibited action conducted by a notary and when it is violated, the notary concerned can be subject to sanctions. Notary has a distribution area in one province and has a domicile in one city or one district of the region. Notaries are prohibited from leaving the notary's domicile for more than 7 (seven) working days, and are not authorized to regularly conduct their positions outside their domicile. This research aims to provide an insight into the professional practices of notaries who involved in corruption cases that harm the state.

RESEARCH METHODOLOGY

This research is juridical normative research that focuses on document studies, such as using legal material sources containing laws and regulations, court decisions, agreements, contracts, legal principles, legal theories, and doctrines/opinions of experts or other sources that are still relevant to research object (Saifudin & Rosmaya, 2022). According to Peter Mahmud Marzuki, normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues being discussed. Normative legal research is

conducted to produce theoretical arguments or new concepts as prescriptive in solving the current problem (Marzuki, 2016).

RESULT AND DISCUSSION

The philosophical basis for the formation of the UUJN is for the realization of guarantees of certainty, order and legal protection that are based on truth and justice. In conduct the duties of his/her office, the notary has and uses an official seal with the state symbol, Garuda Bird, and this is an obligation for notaries that has been determined by notarial laws and regulations. The use of state symbol by notaries is a form of exercising part of the state's power and conduct the state authority as well as supporting and strengthening the authenticity of a notarial deed. The profession of a notary must be guided and adhered to UUJN. The philosophical basis for the establishment of UUJN and the Law amending the UUJN is to realize the guarantee of legal certainty, order and legal protection that based on truth and justice. Notaries must be able to provide legal certainty and protection to the people who use notary services through the deeds they make.

By issuing authentic deeds related to a person's legal status, rights, and obligations in law, notaries play an important role in the community's creation of legal certainty and legal protection that is preventive in nature. These deeds serve as the best possible evidence in court i of a dispute over those rights and obligations. The relationship between this theory of liability and the problem in addition to the notary as a public official has made a good and correct authentic deed and in accordance with the provisions of applicable laws and regulations. Unfortunately, it does not rule out the potential that the notary could be held liable for mistakes he makes that affect the parties and result in legal repercussions for them. Therefore, this theory of liability is used to analyze what can be imposed on the notary as a liability for errors committed by the notary when conducting his duties and positions to provide satisfaction to the parties who are harmed by unlawful acts in making the authentic deeds.

The civil liability of a notary who commits an unlawful act in making the authentic deed, the unlawful act committed by a notary can be divided into 2 kind, called passive and active act. The active act is when the notary commits an act that causes harm to another party. Meanwhile, in a passive act, the notary does not commit acts that are mandatory that causes losses to other parties. Thus, the elements of an unlawful act are the error related to unlawfulness and the existence of losses borne by others (Suhardini et al., 2018). The notaries committing unlawful acts can be based on Article 1365 of the Civil Code which states that every unlawful act that brings harm to another person obliges the to compensate for the loss. Then, this article is used as a basis for stating that the notary's actions are unlawful.

As the consequence of unlawful acts committed by a notary in making the authentic deed, there is a responsibility that must be borne by the notary for his

actions. In civil law, the judge will involve the notary to find the formal truth stated by the parties in the deed. The role of the notary is to write down or express the legal actions committed by the parties into an authentic deed. The notary is not responsible for finding the material truth of the deed. The notary has a neutral role in making the deed, but is obliged when the client asks the Notary to provide legal advice on the legal actions conducted by the client. However, the notary will be responsible for the material truth when the legal advice given is wrong in the future.

The sanctions that can be given to notaries for unlawful acts are civil sanctions, such as reimbursement of costs, compensation, or the interest that must be based on a legal relationship between the notary and the parties who appear before the notary, and when there are parties who directly suffer losses from a deed, they can also sue civilly against the notary. Article 41 of the UUJN determines the existence of civil sanctions. when a notary commits an unlawful act or a violation of Articles 38, 39, 40 of the UUJN, the notarial deed will only have evidentiary power under the hand, which is evidence that cannot be sued for compensation in any form. Furthermore, when the deed is null and void, the deed is deemed to have never existed or never been drafted.

The civil liability of a notary who commits an unlawful act is that the notary is obliged to be responsible for his actions by being subject to civil sanctions, such as reimbursement of costs or compensation to the injured party. However, before the notary is sentenced to civil sanctions, the notary must be able to prove that there has been a loss suffered and the unlawful act or negligence is due to an error that can be accounted for by related notary. In addition to civil liability, notaries can also be charged with administrative sanctions. Administrative sanctions can be divided into 3 types, such as reparative sanctions that aimed at repairing violations of legal order; punitive sanctions and regressive sanctions as a reaction to something disobedience (Supriyanto, 2022). Notarial deed drafting has 2 parts of time levels including the following:

1. First process is the arrival of the parties to convey the intent and purpose of making a deed and submit supporting data in the form of ID Cards and others. Then, the drafting of the deed begins with the existing supporting data. This drafting can be made with the parties or without the presence of the parties depending on the circumstances and the level of difficulty of the deed that cannot be determined. This period is called "Op Maken" (the first step up to the fourth step).
2. Second Process, After the draft of the deed is completed and ready to be read out, explained and corrected in front of the parties who are required to be present before the notary, when it has been controlled or checked and examined the legal subject, the supporting data is read out and explained. There may be revisions approved by the parties with a statement that they have heard, understood, agreed and know the legal consequences because they are in accordance with what the parties

desire. Then, the deed is signed (surrogate) in the form of signatures or fingerprints of the parties, witnesses and notaries. This second process is called *Verlijden* (fifth stage) (A. Prajitno, 2018).

An authentic deed sets out the rights and obligations of the parties who make the deed. Therefore, the determination of the rights and obligations of the parties as outlined in the authentic deed has binding power or force against both parties. In addition to reassurance, an authentic deed is also meant to create order and protection. In general explanation of UUJN, it is stated that legal certainty, order, and protection require several things, such as legal traffic in community life requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. Through an authentic deed that clearly determines rights and obligations, legal certainty is guaranteed and disputes are expected to be avoided. On the other hand, in the general explanation of the UUJN, it is stated that the authentic deed contains the formal truth in accordance with what the parties have informed the Notary. However, the Notary also has an obligation to include that the contents of the "notarial deed" are truly understood and in accordance with the intention of the parties, that is, by reading out until it becomes clear the contents of the notarial deed, as well as providing access to information including access to relevant laws and regulations for the parties signing the deed. Thus, the parties can determine to agree or disagree with the contents of the notarial deed. The purpose of making an authentic deed by the parties is to serve as evidence in the case of a dispute between the two parties. Although the occurrence of such disputes cannot be avoided in the dispute resolution process, the authentic deed which is the strongest and fullest written evidence makes a real contribution to the settlement of cases in a low cost and fast process.

The authentic deed as the strongest and fullest evidence has an important role in every legal relationship in people's lives. In various business relationships, banking activities, land, social activities and so on. The authentic deed is made for evidentiary purposes in the case of a dispute between the parties, then the authentic deed is given evidentiary power (*Bewijskracht*). The legal theory of proof gives enormous power to the authentic deed, which has perfect evidentiary power (*volledig bewijskracht*) when it can provide sufficient certainty to the judge, unless there is proof of resistance (*tegen bewijs*), then the judge will give the legal consequences. The evidence that has perfect evidentiary power is an authentic deed Article 165 HIR, Article 285 R. Bg and Article 1870 of the Civil Code.

In addition to having binding force and evidentiary power, a notarial deed can also have executorial power, called the power to be implemented. This means that the provisions regarding the rights and obligations of the parties contained in the deed can be implemented forcibly like a court decision. Only certain deeds of notarial deeds have executorial power, that is, deeds on the head of the deed are given an executorial title. The executorial title is in the form of an *irah-irah* which reads "For the Sake of Justice Based on God Almighty." *Irah-irah* means the head

of the decision which is always contained at the beginning of a decision. Therefore, the inclusion of the *irah-irah* will give power to the deed issued by the notary to be implemented by force like a court decision that has permanent legal force (*inkracht van gewijsde*). Notarial deeds that are given an executorial title are called original certificate (*grosse*), which is one of the copies of the deed for debt acknowledgment with the head of the deed "For the sake of justice based on God Almighty" (Article 1 point 11 of UUJN). Then, the original certificate is a copy of the deed issued by a notary that has executorial power. The only deed for which a *grosse* can be issued is the deed of acknowledgment of debt.

Notarial deeds that cause criminal cases has evidentiary power as a deed under hand or becomes null and void as stipulated in Article 41 of the UUJN which contains acts of violation committed by notaries against the provisions referred to in Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter l, Article 17, Article 41, Article 44, Article 48, Article 49 paragraph (4), Article 50, Article 51, or Article 52. An authentic deed that only has the evidentiary power of an underhand deed or a deed becomes null and void can be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest from the notary. When a notary conducts his duties and obligations in accordance with the UUJN, fulfills the procedures and requirements in making the deed and the contents of the deed are in accordance with the wishes of the parties facing it, the claim of tort based on Article 1365 of the Civil Code. To avoid the notarial deed from being degraded into a deed under the hand or the notarial deed becomes null and void and the notarial act with the confrontants is not qualified as an unlawful act, a notary in must comply with various provisions contained in the UUJN and other substantive material regulations. A deed has the following evidentiary powers:

Table 1. The Formal and Material Aspects of A Deed

It has the power of proof outward (Uitwendige bewijskracht)	The ability of the deed itself to prove its authenticity.	This ability is based on Article 1875 of the Civil Code which cannot be assigned to a deed made under hand. This means that from the outward form of the deed and from the content of the words indicating that the deed came from a public official, the deed is considered an authentic deed until it can be proven that the deed is not an authentic deed.
It has the power of formal proof (Formale bewijskracht)	The deed provides certainty about an event and that the facts in the deed were actually carried out by the notary or described by the parties who appeared.	The official concerned has declared the statement as stated in the deed and other than that the truth of the things described by the official in the deed as being done and witnessed by him in his position.
In the material understanding of an official deed (ambtelijke acte)	The deed has material evidentiary power (materiele bewijskracht), that the contents of the deed are valid evidence against the parties who make the deed or those who get the right and apply to the public, unless there is evidence to the contrary (tegenbewijs).	

Source: Processed Data

It can be concluded that an authentic deed must contain these three elements (formal and material), when one of these elements is incorrect and causes a criminal case that can be proven untrue, the position of the notarial deed made only resulted in the deed made, namely the deed becomes a deed under the hand or becomes null and void as stipulated in Article 41 of the UUN. In conducting his/her position, a notary must comply with the provisions of the law and the deed is made by and before a public official in accordance with the procedures for making an authentic

deed for its authenticity does not become an underhand deed or null and void. Based on the UUJN as amended by the UUJN Amendment Law, the regulation of all forms of criminal acts committed by notaries in terms of issuing deeds is based on several provisions as stipulated in Article 15 paragraph (1), paragraph (2) and paragraph (3) which state the specifications of a notary's obligations as follows:

1. Professionalism;
2. Obligation to refuse to provide services when it is contrary to the notary office law and the law;
3. Required to have good moral integrity;
4. Compelled to provide legal counseling related to the deed created.

In the Criminal Procedure Law, letter evidence is regulated in Article 187 of the Criminal Procedure Code, which explains that letters made under oath or strengthened by pledge are classified as follows:

1. Official report and other documents in the form of an official letter made by an authorized public official or made in his presence, containing information about events or circumstances that have been heard, seen, or experienced by himself, accompanied by clear and firm reasons for the description.
2. A letter made in accordance with the provisions of laws and regulations or a letter made by an official concerning a matter included in the administration for which they are responsible and intended for proving a matter or a situation.
3. A statement letter from an expert containing an opinion based on his expertise on a matter or circumstance formally requested from him.
4. Other letters that can only be valid when there is a relationship with the contents of other evidentiary instruments.

An authentic deed is a form of letter as in Article 187 letter a of the Criminal Procedure Code because an authentic deed is an official letter made and or before a public official (notary) and is used as valid evidence from the letter is made. There are several evidentiary powers on letter evidence according to the Criminal Procedure Code:

1. Formal Term

Letter evidence in Article 187 letters a, b, c is perfect evidence because the forms of letters referred to in it are made officially according to the formalities determined by statutory regulations. With the fulfillment of formal provisions, letter evidence has perfect formal evidentiary value.

2. Material Term

Letter evidence in Article 187 of the Criminal Procedure Code is not evidence that has binding force. The value of the evidentiary power of this letter is the same as the value of the evidentiary power of witness

testimony, expert testimony, and other valid evidence. Letter evidence and other legal evidence both have an independent evidentiary value. In this case the judge is free to assess its evidentiary strength and can use it or even remove it.

The basis for judge's detachment in criminal cases on letter evidence is based on three principles, such as:

1. The principle of the criminal case examination process is to examine material truth, not to seek formal truth.
2. The principle of judge's conviction is related to evidence based on Article 183 of the Criminal Procedure Code which states that the judge may not impose a sentence on a person unless with at least two valid evidences he is convinced that a criminal offense actually occurred and the defendant is guilty of committing it.
3. The principle of the minimum limit of proof (Din, 2019).

Considering the formal aspect, letter evidence is valid evidence and has perfect value. However, the nature of its formal perfection is subject to the principle of the minimum limit of proof as specified in Article 183 of the Criminal Procedure Code. In civil and criminal procedural law, the principle applies that a person may not be considered guilty before a judge's decision that is legally binding (*incraht van gewijsde*). The Notary making the authentic deeds relating to civil matters has attributive authority that attached to the position and given by law. When a notary deviates from a deed that he makes that causes a criminal case, he must be criminally responsible for all that has been done.

Criminal responsibility exists with the continuation of objective censure (*verwijbaardheid*) against acts that are declared as criminal offenses under applicable criminal law, and subjectively to perpetrators who meet the requirements to be subject to punishment because of their actions (Mowoka, 2014). Thus, criminal responsibility is discussing fault in criminal law. The element of fault in criminal law is the most important element because based on the principle of *geen straf zonder schuld* or liability based on fault or culpability, the existence of fault is the first to be discussed in every criminal offense. When the content of the deed issued by a notary is proven to be a criminal act of content or signature in a deed issued by a notary, the criminal liability imposed is in accordance with the provisions in the Criminal Code. The content of the deed is a deed made by a notary and must meet the formal and material requirements, including the date, month, year, and be signed by the parties, witnesses and notary. The signing by the parties in an authentic deed must be emphasized in the deed with the aim of authenticity of the signatures of the parties in the deed.

Article 263 paragraph (1) has two elements, including objective elements and subjective elements. The following are some of the contents of the objective element:

1. Making a false letter;
2. Forging a letter;
3. It can issue a right or an agreement/mandate, which can be used as evidence of a matter.

The following are some of the intended subjective elements listed in Article 263 paragraph (1):

1. To use or exploit the genuine letter and not forged;
2. The utilization of the letter may cause loss. In Article 263 paragraph (1) contains two types of prohibited acts, these are making a false letter and forging a letter. This crime is called Mail Forgery.

A notary must be held accountable for a deed when it contains a criminal act. The responsibility is in the form of strict sanctions in accordance with the implementation of the law with Criminal Code and Criminal Procedure Code. Legal settlements between the two types of law differ in the way they are resolved. The following are some of the consequences of these legal settlements as follows:

1. The act is a criminal offense.
2. The act is neither unlawful nor a criminal offense.
3. The act is unlawful but does not constitute a criminal offense.
4. The act is not unlawful, but is a criminal offense (Fuady, 2017).

When a person is suspected of fulfilling the elements of a criminal offense, it is also possible (although not always) that the elements of an unlawful act. If there is one action that fulfills the elements of a tort as well as the elements of a criminal offense, then both types of sanctions can be imposed simultaneously. This means that the victim can receive civil compensation (on the basis of a civil lawsuit), but also at the same time (with the criminal process) the perpetrator can be imposed criminal sanctions at the same time.

The only difference between criminal acts and unlawful acts (civil) is their nature as public law. Therefore, in a criminal act, there is a public interest that is violated (in addition to individual interests), whereas with a tort (civil) act, only individual interests are violated. A mistake made in the exercise of any position is called a *beroepsfout*. The term *beroepsfout* is usually applied to mistakes made by doctors, advocates and notaries, as these three positions have historically belonged to the same category. According to Marthalena Pohan, these three positions are usually referred to as *de operae liberales*, which is a position in which the holder of the position works continuously to earn a living but the implementation of the position is also intended for the public interest (Khoidin & Thamrin, 2021).

A mistake in conducting a profession can be caused by lack of knowledge (onvoldoende kennis), lack of experience (onvoldoende ervaring), or lack of understanding (onvoldoende inzicht). Similarly, notary mistakes in conducting their duties are sometimes caused by the notary's lack of knowledge of the issues requested by the parties both from a legal and other aspects. For certain notaries, especially new notaries who lack experience in handling issues filed by the parties, it is not common to make mistakes in interpreting the intentions and requests of the parties into the deed created. The notary's lack of understanding of the intentions and requests of the parties also often leads to errors in notarial deeds.

Violations or mistakes can cause losses to the parties or other people, including the state. Therefore, mistakes made by notaries in conducting their duties can have an impact on the deeds they have made, such as only having the power as an underhand deed (underhand act) when signed by people as *a notarial act*, which changes to *an underhand act* can cause the notary to be obliged to provide compensation. In implementing the notary position, professional responsibility is required concerning the services provided. Komar Kantaatmaja, as quoted by Shibata, states that professional responsibility is a legal liability in relation to professional services. It can occur because they (professional service providers) do not fulfil the agreements they agree with their clients or because of the service provider's negligence resulting in illegal acts.

The party who is harmed due to the violation can file a claim or lawsuit for compensation to the relevant notary through the court. Meanwhile, the party that must be sued or claimed is called the responsible party. Liability is the obligation of a person to take all the consequences of any act or legal relationship that causes harm to another person and the injured person claims his rights through a judicial institution. Yan Pramudya Puspa states that liability is another form of responsibility (aansprakelijk zijn). The word *aansprakelijk* can also be interpreted as *aanspreken* or *in recht aanspreken* which means pledged. The principle of fault liability is a principle that generally applies in criminal and civil law. In the Civil Code, especially Articles 1365, 1366, 1367, this principle is upheld.

This principle states that a person can only be held legally responsible if there is an element of fault. Article 1356 of the Civil Code is commonly known as the article on criminal acts which requires the fulfillment of the following four main elements, including the existence of an act, the existence of the element of fault, the existence of loss suffered, and the existence of a causal relationship between the fault and the loss. The definition of fault is the element that is contrary to the law. The definition of unlawful is not only contrary to the law but also contrary to propriety and decency in society. This principle states that the defendant is always considered responsible (presumption of liability principle) until he can prove his innocence. The word "presumed" in the principle of presumption of liability is considered important because there is a possibility that the defendant can

successfully free himself from liability, in the case of proving that he has taken all necessary measures to avoid the occurrence of losses.

The principle of strict liability is often identified with the principle of absolute liability. However, there are also experts who distinguish the two terms mentioned earlier. There is an opinion stating that strict liability is the principle of responsibility that stipulates fault is not a determining factor. However, there are exceptions that allow for exemption from liability. Meanwhile, absolute liability is the principle of responsibility without fault and there are no exceptions. According to E. Suherman, strict liability is no possibility to absolve oneself from responsibility, unless the loss caused by the fault of the injured party itself. Therefore, the responsibility is absolute. In relation to the implementation of the notary position, professional responsibility is required in relation to the services provided. In providing their services, these professionals (including notaries) must be responsible to themselves and society. Being responsible to oneself, such as working with moral, intellectual and professional integrity as part of one's life. In accordance with the provisions of the obligations in Article 16 Paragraph (1) letter a of the UUJN, it is stated that notaries are obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of related parties in legal actions.

CONCLUSION

Notaries committing unlawful acts will be sanctioned in accordance with the regulations in Article 1365 of the Civil Code which states that every unlawful act that causes harm to others, the person must compensate for the loss. The unlawful act committed by the Notary can be divided into 2, consisting passive and active acts. In the active act, the Notary commits an act that causes harm to the other party. Meanwhile, in the passive action, the Notary does not commit an act that is a necessity that causes the other side to suffer losses. Article 41 of the UUJN determines the existence of civil sanctions. When a Notary commits an unlawful act or violation of Articles 38, 39, 40 of the UUJN, the Notarial deed will only have evidentiary power under the hand which is evidence that cannot be sued for compensation in any form.

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