



The urgency of regulating notary immunity rights against civil and criminal claims related to the creation of authentic deeds with inaccurate content

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Abstract

Article 15 of Law Number 2 of 2014 concerning the Position of Notary, a notary is authorized to create authentic deeds concerning all acts, agreements, and stipulations required by legislation and requested by the concerned parties to be documented in a deed. The notary does not have the authority to investigate or verify the material truth of the data and information provided by the parties. However, when problems arise, the notary is subject to civil and criminal charges for allegedly assisting in including false information in the deed. Based on this description, the issue to be investigated is whether notaries should have regulated immunity rights against civil and criminal charges related to the creation of authentic deeds. How does the regulation of immunity rights compare between lawyers and notaries? How do notaries regulate immunity rights and how do judges consider this in court rulings? The purpose of this research is to analyze and explain the importance of the existence of notary immunity rights against civil and criminal claims related to authentic deeds, analyze the comparison of regulations between lawyer immunity rights and notary immunity rights, and analyze how notaries attempt to regulate the existence of immunity rights and how judges consider this in court rulings. The type of research used is normative, a legal literature study conducted by examining both primary and secondary sources. The approaches used are legislative, comparative, and conceptual. Data processing using data analysis methods based on systematic understanding and processing of data. The research results indicate that notaries greatly need clear and firmly written rules governing immunity related to the deeds they create, similar to the immunity rules for lawyers regulated in the Advocate Law. One of the efforts by notaries to regulate a form of immunity rules is to conduct public outreach and propose ideas and concepts about the importance of immunity rules to relevant parties. Recommend to the government to reform the Notary Law regarding the importance of establishing rules on notary immunity rights. Notaries are advised to act carefully, enhance their knowledge, and consistently apply the principle of caution in carrying out their duties to avoid civil and criminal issues. Law enforcement officials, in examining and adjudicating cases related to deeds containing inaccurate information, should pay closer attention to the Notary Law in the process of creating authentic deeds.

Keywords: Immunity rights, civil and criminal lawsuits, authentic deed

Introduction

The Notary is a position closely associated with the word "trust". The law has explicitly stated that notaries, in addition to being authorized to create authentic deeds as requested by the appearers, must also maintain the confidentiality of their client's information. But, in practice, notaries are often involved in legal cases either as witnesses or as suspects. The involvement of notaries in legal cases not only occurs due to errors in drafting deeds but can also be caused by other factors, such as document forgery. For example, the contents of a notarial deed being forged by another party without the notary's knowledge and the involvement of parties related to the original deed. This situation can lead to losses for the rightful parties well as the implicated notary.

The notary records the contents of the deed according to the wishes of the appearing parties who approach the notary. In this regard, the notary is only obligated to document the intentions of those parties. Therefore, the responsibility for the contents of the deed lies with the appearing parties. The notary is not responsible for the contents of the deed they created, as the content represents the intentions and agreements among the appearing parties ^[1].

As a public official, a notary is held accountable for the deeds they created. If a deed created by them becomes disputed, it needs to be questioned whether the error lies

with the notary, or with the parties who did not provide genuine documents or provided incorrect information without the notary's knowledge, or if there was an agreement made between the notary and one of the appearing parties. If a deed created by a notary is legally defective due to the notary's error, whether due to negligence or intent, the notary must be accountable, both morally and legally ^[2].

However, in practice, there are civil and criminal lawsuits against notaries regarding the creation of authentic deeds that contain false information at the request of the parties involved. For example, as found in the District Court Decision of Sleman Number: 336/Pid.B/2017/PN Smn, Notary Hamdani was duly and convincingly proven guilty of criminal conduct for knowingly placing false information in an authentic deed.

In practice, it happens if a notarial deed is disputed by the parties or other third parties, and the notary is suspected of participating in or assisting in committing a criminal act by creating or inserting false information into the notarial deed. In such cases, the notary, whether intentionally or unintentionally, is considered to be acting together with one of the parties to create a deed that aims to benefit one party or one appeared only, thereby potentially harming the other ^[3].

Unlike advocates, who have inherent immunity rights as regulated by Law Number 18 of 2003 concerning Advocates (referred to as the Advocate Law), the immunity rights in the advocate profession are not new. Constitutional Court Decision Number 26/PUU-XI/2013 expanded the scope of advocate immunity, so they cannot be sued, either civilly or criminally, in carrying out their professional duties in good faith for the defense of clients both inside and outside the courtroom ^[4].

In another court decision, specifically Decision Number 31/Pdt.G/2004/PA.GS concerning inheritance rights, the plaintiff authorized an advocate to represent them in court for the defense against the defendant, who essentially rejected all of the plaintiff's claims, except those the defendant acknowledged as true. According to the defendant, what the advocate presented did not reflect the facts. In this case, the advocate invoked their immunity rights to protect themselves from the defendant's attacks regarding the truth of the matter presented by the advocate. Advocates are granted immunity rights because in defending their clients, they should not be subject to criminal, civil, or administrative penalties, as long as the defense is conducted lawfully.

Based on the description above, the author is interested in conducting on the urgency of regulating notary immunity rights regarding civil and criminal claims related to created authentic deeds with inaccurate content.

Research Method

This research is of a normative juridical nature. The normative juridical research method involves legal library research created by examining literature or secondary data. The purpose of this study is to obtain materials such as theories, concepts, legal principles, and regulations related to the subject matter. In this research, the scope will focus on extracting legal principles, encompassing both written and unwritten positive law ^[6].

The methodological approaches used in the preparation are as follows: Firstly, the statutory approach involves examining all legislative regulations and regulations related to the legal issues addressed. Secondly, the comparative approach is used to understand and identify something through comparison. Thirdly, the conceptual approach stems from views and doctrines developed within legal science. The data obtained is then analyzed using a qualitative analysis approach, which involves observing the acquired data and connecting each of the data with provisions and legal principles related to the researched issues through inductive logic, reasoning from specific to general, and using normative tools. The data is described descriptively and prescriptively to obtain a clear and directed understanding to address the researched issues. Subsequently, conclusions are drawn using a deductive thinking method, which starts from the general to the specific, using theories, principles, or propositions to conclude the facts.

Results and Discussions

A notary is an official authorized by the state (based on legal provisions) to declare the occurrence of legal relationships (*recht verhouding*) between parties in a deed. Based on this, it is clear that a notarial deed is directly related to the dignity of the parties involved in making promises. The promises stated in the deeds are the sincere

intentions of the parties towards each other and also demonstrate the dignity of the parties grounded in the noble values of communal life within society, nation, and state ^[5].

An authentic deed essentially contains formal truth by the parties to the notary. However, the notary must ensure that what is stated in the notarial deed is genuinely understood and by the intentions. This is done by reading it aloud to clarify the contents of the notarial deed, and by providing access to information, including access to relevant legal regulations for the signing parties. Therefore, the parties can freely decide whether to approve or disapprove of the contents of the notarial deed they have signed.

An authentic deed, as the strongest and most complete form of evidence, plays a crucial role in every legal relationship in society. It is essential in various business transactions, banking activities, real estate dealings, social interactions, etc. The demand for written proof in the form of authentic deeds is increasing alongside the growing need for legal certainty in economic and social relationships, both at the national, regional, and global levels ^[6].

The main basis for creating a notarial deed is the presence of the will or desire and request of the parties involved. If there is no will from the parties, the notary will not create the intended deed. The parties approach the notary to have their legal actions or transactions formulated into an authentic deed according to the notary's authority. Subsequently, the notary drafts the deed based on the request or desire of the parties involved. In the creation of the deed, the parties come voluntarily and express their intentions before the notary, which are then recorded in the notarial deed according to applicable legal rules.

Regarding the above matter, essentially the form of a notarial deed containing actions and other certified by a notary generally must comply with the provisions of applicable legislation, both regulated in the Civil Code and the Notary Law and Notary Code of Ethics. However, in practice, deeds made by and in the presence of a notary often encounter issues. Sometimes, deeds made before a notary do not correspond with the statements of the part, or there are instances where deeds made before a notary suffer from legal defects due to the notary's negligence when creating the deed. As a result, the deed made before the notary loses its authenticity, thus becoming a private document or even being declared null and void under the law ^[7].

In carrying out their duties, a notary must consider factors that can influence and support the execution of their duties. In the cases, of allegations of violations related to deeds made by a notary, coordination and intensive communication between the police and the Notary Honorary Council are necessary for optimal law enforcement. The police must obtain permission from the Notary Honorary Council before summoning a notary involved in a case resulting from their actions.

When a notary is suspected of committing violations and is sued civilly and criminally due to an authentic deed that does not reflect the facts, the notary is examined by the Honorary Council. However, in the preparation deeds, notaries are not obliged to seek material truth regarding the statements made by the parties appearing before them, which often results in issues for the notary. In this regard, there are no explicit and clear rules that protect notaries from such cases, thereby creating vulnerabilities in their duties. This demonstrates that notaries greatly need rules

regarding immunity in authentic deeds concerning notaries who are sued civilly and criminally due to inaccuracies by the parties appearing before them, similar to the immunity rights afforded to lawyers under the Advocates Law.

In law, there are two types of immunity rights known as absolute immunity, which permanently apply and cannot be revoked by anyone. The second type is qualified immunity, which is relative, meaning this immunity can still be set aside when it is intentionally used to harm, insult, or degrade someone's reputation or dignity^[8].

The legal profession of advocate enjoys a privilege in the form of immunity, which protects them from civil and criminal liability while carrying out their duties inside and outside the courtroom with good faith. This phrase clarifies the immunity of lawyers and underscores the balanced moral obligations and responsibilities they hold^[9].

The rights held by lawyers regarding immunity when defending a case are their responsibility. Even in criminal or civil matters, lawyers cannot be counter-sued while performing their duties related to immunity rights as specified not only in the Advocates Law itself but also in the Legal Aid Law, based on Article 11 of Law Number 16 of 2011 concerning Legal Aid, which states, "Providers of legal aid cannot be sued civilly or criminally for providing legal aid that is their responsibility and carried out in good faith both inside and outside court sessions according to legal aid standards based on laws and the Advocate's Code of Ethics." Further regulations on limited immunity rights for lawyers are stipulated in Articles 14, 15, and 16, which are more central compared aforementioned articles. Furthermore, the immunity rights of lawyers are reaffirmed in Decision No.26/PUU-XI/2013, where the Constitutional Court introduced a new perspective that has comprehensive legal vitality. The key point of the decision is "recognizing and guaranteeing protection for lawyers in non-litigation actions carried out in good faith and in the interest of defending clients both inside and outside court^[10]."

While there are similarities in terms of legal protection provided to lawyers and notaries when performing their duties, there are differences in the scope of application and supervision of these immunity rights. The rules regarding the immunity rights of lawyers are stipulated in Article 16 of the Advocates Law, stating that lawyers cannot be sued civilly or criminally carrying out their duties with good intentions. However, notaries do not yet have a clear provision in the Notary Law stating that they cannot be sued civilly or criminally regarding the preparation of authentic deeds. This immunity right is crucial to ensure that these professions can carry out their duties independently and professionally without fear of unfounded legal claims.

Given the complexity of the tasks and the exercise of notarial rights in carrying out their duties, they need to obtain legal protection. In this regard, the existence of standardized legal protections is highly anticipated. The task and authority of the Honorary Council of Notaries (MKN) include examining notaries in response to requests from investigators, prosecutors, or judges to obtain copies of minutes or other documents attached to the minutes or in the notarial protocol kept by the notary. The council also summons notaries regarding deeds they have executed or entries in the notarial protocol maintained by the notary. The final outcome of the examination results in either approving or rejecting requests from investigators, prosecutors, or judges.

The judge's considerations in deciding case Number: 336/Pid.B/2017PN.SMn, which stated that Notary Hamdani had fulfilled the elements of Article 266 paragraph (1) of the Indonesian Penal Code (KUHP) in conjunction with Article 55 paragraph (1) of the KUHP, proven convincingly and legally guilty of the criminal act of "participating in instructing to place false information into an authentic deed." The judge imposed the sentence primarily based on the violation of Article 266 paragraph (1) of the KUHP in conjunction with Article 55 paragraph (1) of the KUHP, regarding the Deed of Sale Agreement, Power of Attorney to Sell, and Sale and Purchase Deed used for the transfer of ownership of Certificate of Land Title No. 4127/Triharjo and Land Certificate No. 328/Triharjo, which Notary Hamdani executed as deeds made at his own discretion by including inputs that violated the law, thereby facilitating the wrongful intent of the parties involved. Consequently, the judge found that the notary was guilty of creating a false authentic deed and must be held criminally responsible.

Based on the judge's considerations, the judge did not take into account the duties of a notary, which are to create deeds, especially deeds of the parties (partij acte) whose contents are based on the wishes of the parties. In the case of created a deed, when the client and the documents brought by the client have convinced the notary of their validity, it is sufficient to proceed with the wishes of the clients.

In this case, the judge only focused on the Criminal Code (KUHP) without referring to the Notary Law. If referring to the Notary Law (UUJN), Notary Hamdani complied with the applicable provisions in creating the deed, albeit with less carefulness. This does not mean that Notary Hamdani committed a criminal act. The exception is if Notary Hamdani created the deed in the absence of the clients, but made it appear as though they were present. However, in this matter, the clients were indeed present, and the notary was confident about their presence.

Conclusion

A notary should ideally have rules granting immunity from civil and criminal claims related to the preparation of authentic deeds. Notaries are often blamed for authentic deeds containing inaccurate information, for which they lack the authority to investigate or verify the accuracy of data and information provided by the parties involved. Therefore, notaries greatly need clear and written rules governing immunity to prevent civil and criminal prosecution and to enhance protection and confidence in the notarial profession, similar to the immunity rules granted to another legal service provider, namely lawyers.

Comparison of the regulations regarding the immunity rights of lawyers in carrying out their duties as legal service providers, protected by the Advocates Law, is clearly stipulated in Article 16 of the Advocates Law that lawyers cannot be sued civilly and criminally in carrying out their duties with good faith, whereas notaries in carrying out their duties are protected by the Notary Law and Notary Code of Ethics, but there is no clear and explicit rule governing immunity rights for notaries similar to the rules governing immunity rights for lawyers.

The notary's effort to establish a kind of immunity for the authentic deeds he creates includes conducting socialization or open seminars attended by members of the Indonesian Notary Association, the Notary Honorary Council,

academics, and the public regarding the importance of having rules on notarial immunity for authentic deeds created by them. This can protect notaries in case there are issues with authentic deeds that do not reflect the facts due to statements made by the parties involved. In court decision number 336/Pid.B/2017PN.SMn, the judge's consideration stated that the Notary had fulfilled the elements of Article 266 paragraph (1) of the Criminal Code (KUHP) in conjunction with Article 55 paragraph (1) of the KUHP because it was proven beyond a reasonable doubt that he was guilty of participating in the act of instructing the placement of false statements in an authentic deed.

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